

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D16767  
Y/cb

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Argued - October 9, 2007

ROBERT W. SCHMIDT, J.P.  
PETER B. SKELOS  
ROBERT A. LIFSON  
RUTH C. BALKIN, JJ.

2006-06804

DECISION & ORDER

Nevenka Ercegovic, et al., appellants, v P & T  
Management Co., LLC., respondent.

(Index No. 19054/03)

Soffey & Soffey, LLC, Garden City, N.Y. (Joseph E. Soffey of counsel), for appellants.

Jacobson & Schwartz, Rockville Centre, N.Y. (Henry J. Cernitz of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from a judgment of the Supreme Court, Queens County (Kitzes, J.), entered May 2, 2006, which, upon a jury verdict on the issue of liability, is in favor of the defendant and against them, dismissing the complaint.

ORDERED that the judgment is affirmed, without costs or disbursements.

The plaintiffs' contention that the Supreme Court should have charged the jury with a provision of Administrative Code of City of NY (hereinafter the Administrative Code) and Multiple Dwelling Law § 62 is without merit. The plaintiffs failed to submit sufficient proof to establish when the subject building was constructed, and thus, they failed to establish the applicability of the statute and the Administrative Code (*see Roman v Parkash*, 4 AD3d 408, 408; *Sparrock v City of New York*, 219 AD2d 705; *Ross v Manhattan Chelsea Assoc.*, 194 AD2d 332; *Healy v Chanin*, 6 AD2d 806, 806).

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It is within the trial court's discretion to admit expert testimony, and, in the absence of serious mistake, an error of law, or an improvident exercise of discretion, the determination will not be disturbed (*see McGillvery v City of New York*, 22 AD3d 537, 538; *Pignataro v Galarzia*, 303 AD2d 667, 668; *Dimond v Heinz Pet Prods. Co.*, 298 AD2d 426, 426). The Supreme Court providently exercised its discretion in precluding the plaintiffs' expert from testifying with respect to alleged violations of certain safety standards and codes, particularly since the plaintiffs failed to establish the applicability of Multiple Dwelling Law § 62 and the Administrative Code (*see Franco v Muro*, 224 AD2d 579, 579; *Sparrock v City of New York*, 219 AD2d 705, 706; *Epolito v Mariani*, 210 AD2d 1005, 1005; *Ross v Manhattan Chelsea Assoc.*, 194 AD2d 332, 333).

SCHMIDT, J.P., SKELOS, LIFSON and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court