

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

D17031
Y/hu

_____AD3d_____

Submitted - September 10, 2007

STEPHEN G. CRANE, J.P.
ROBERT A. LIFSON
EDWARD D. CARNI
RUTH C. BALKIN, JJ.

2006-09475

DECISION & ORDER

Vasiliy Mikhaylo, et al., respondents, v Yevgeniy
Chechelnitskiy, et al., appellants, et al., defendant.

(Index No. 13072/03)

Cullen & Dykman, LLP, Brooklyn, N.Y. (Kevin C. McCaffrey of counsel), for
appellants.

Borrell & Riso, LLP, Staten Island, N.Y. (John Riso of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants Yevgeniy Chechelnitskiy and Zinaida Genkina appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schneier, J.), dated September 12, 2006, as denied that branch of their motion which was for summary judgment dismissing the causes of action based on common-law negligence and violation of Labor Law § 200 insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the appellants' motion which was for summary judgment dismissing the causes of action based on common-law negligence and violation of Labor Law § 200 insofar as asserted against them because they failed to establish their prima facie entitlement to judgment as a matter of law dismissing these causes of action (*see Zuckerman v City of New York*, 49 NY2d 557, 562; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Mariaca-Olmos v Mizrhy*, 226 AD2d 437, 438). In particular, they failed to establish that they lacked actual or constructive notice of the allegedly dangerous condition that caused the plaintiff Vasiliy

November 27, 2007

Page 1.

MIKHAYLO v CHECHELNITSKIY

Mikhaylo's injury (*see Keating v Nanuet Bd. of Educ.*, 40 AD3d 706, 708). Because the appellants failed to meet their prima facie burden, the sufficiency of the opposition papers need not be addressed (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Mariaca-Olmos v Mizrhy*, 226 AD2d 437).

CRANE, J.P., LIFSON, CARNI and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court