

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

D17863
C/hu

_____AD3d_____

Argued - December 11, 2007

DAVID S. RITTER, J.P.
HOWARD MILLER
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2006-10435

DECISION & ORDER

Deborah Stein, appellant, v Harriet
Management, LLC, et al., respondents.

(Index No. 23165/01)

Harry Organek, Garden City, N.Y., for appellant.

Harrington, Ocko & Monk, LLP, White Plains, N.Y. (I. Paul Howansky of
counsel), for respondent Harriet Management, LLC.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Satterfield, J.), dated June 20, 2006, as, upon renewal, granted that branch of the prior motion of the defendant Harriet Management, LLC, which was for summary judgment dismissing the complaint insofar as asserted against it, which had been denied in an order of the same court dated September 12, 2005.

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

The plaintiff allegedly fell on debris and was injured while descending the stairs in a bar and restaurant known as Jake's Dilemma, which is located on property owned by the defendant Harriet Management, LLC (hereinafter Harriet). The plaintiff subsequently commenced this action against Harriet and Harriet Management, d/b/a Jake's Dilemma, alleging, inter alia, that the stairs were negligently maintained.

Upon renewal, the Supreme Court, among other things, granted that branch of Harriet's motion which was for summary judgment dismissing the complaint insofar as asserted

May 27, 2008

Page 1.

STEIN v HARRIET MANAGEMENT, LLC

against it, finding that Harriet was an out-of-possession landlord not liable for the plaintiff's injuries. We affirm.

An out-of-possession landlord is generally not responsible for injuries that occur on the premises unless that party has retained control over the premises or is contractually obligated to maintain or repair the alleged hazard (*see Couluris v Harbor Boat Realty, Inc.*, 31 AD3d 686; *Knipfing v V&J, Inc.*, 8 AD3d 628, 628-629; *Eckers v Suede*, 294 AD2d 533). Harriet established its prima facie entitlement to summary judgment by submitting the entire lease, with riders, which demonstrated that it relinquished control of the leased premises and was not obligated under the terms of the lease to maintain or repair the staircase (*see Couluris v Harbor Boat Realty, Inc.*, 31 AD3d 686). In opposition, the plaintiff failed to raise a triable issue of fact as to whether the allegedly defective condition constituted a specific statutory violation (*see O'Connell v L.B. Realty Co.*, ___ AD3d ___, 2008 NY Slip Op 03181 [2d Dept 2008]; *Ahmad v City of New York*, 298 AD2d 473, 474; *Kilimnik v Mirage Rest.*, 223 AD2d 530).

The plaintiff's remaining contentions are without merit.

RITTER, J.P., MILLER, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court