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

D17939
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_____AD3d_____ Argued - January 7, 2008

FRED T. SANTUCCI, J.P.
JOSEPH COVELLO
EDWARD D. CARNI
RUTH C. BALKIN, JJ.

2007-00554 DECISION & ORDER

Joseph Kane, et al., respondents, v Port Authority
of New York and New Jersey, appellant.

(Index No. 3635/05)

Miranda Sokoloff Sambursky Slone Verveniotis LLP, Mineola, N.Y. (Ondine Slone and Gabriella Campiglia of counsel), for appellant.

Molod Spitz & DeSantis, P.C., New York, N.Y. (Marcy Sonneborn and Salvatore J. DeSantis of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Kings County (Balter, J.), dated November 8, 2006, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff Joseph Kane (hereinafter the plaintiff) fell and allegedly was injured while retrieving boxes from an elevated storage area located on property owned by the defendant and rented to Urban Pathways, a not-for-profit social services organization. The plaintiff and his wife, suing derivatively, commenced this action against the defendant, alleging, inter alia, that the storage area constituted a dangerous condition that violated numerous provisions of the New York City Building Code.

The Supreme Court denied the defendant's motion for summary judgment dismissing the complaint, finding that triable issues of fact existed as to whether the defendant had relinquished

control of the premises, and had constructive notice of the alleged hazard. We affirm.

An out-of-possession landlord is generally not responsible for injuries that occur on its premises unless it 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). Reservation of a right of re-entry for inspection and repair in a lease may, under certain circumstances, constitute sufficient retention of control to impose liability for injuries caused by an alleged hazard (*see Guzman v Haven Plaza Hous. Dev. Fund Co.*, 69 NY2d 559, 566). Here, the defendant established its prima facie entitlement to summary judgment by submitting the entire lease and an affidavit of its physical plant manager, both of which demonstrated that it relinquished control of the leased premises and that it was not obligated under the terms of the lease to perform interior maintenance (*see Couluris v Harbor Boat Realty*, 31 AD3d 686). However, in opposition, the plaintiff raised triable issues of fact as to whether the defendant actually was an out-of-possession landlord which had relinquished control and whether the defendant had constructive notice of the alleged dangerous condition (*see Ingargiola v Waheguru Mgt*., 5 AD3d 732; *Zappel v Port Auth. of N.Y. & N.J.*, 285 AD2d 389; *Fucile v Grand Union Co.*, 270 AD2d 227).

Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint.

The defendant's remaining contentions are without merit.

SANTUCCI, J.P., COVELLO, CARNI and BALKIN, JJ., concur.

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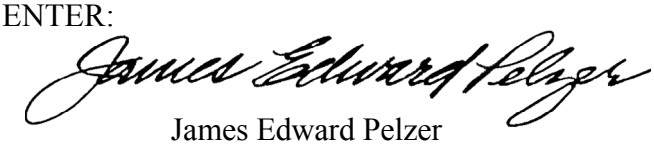

James Edward Pelzer
Clerk of the Court