

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

D18189
X/mv

_____AD3d_____

Argued - January 29, 2008

DAVID S. RITTER, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-08245

DECISION & ORDER

Michael Whitfield, plaintiff-respondent, v
City of New York, et al., defendants-respondents,
Vales Construction Corp., appellant.

(Index No. 27697/06)

Shayne, Dachs, Corker, Sauer & Dachs, LLP, Mineola, N.Y. (Norman H. Dachs and Jonathan Dachs of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Elizabeth I. Freedman of counsel), for defendants-respondents City of New York and New York City Department of Design and Construction.

Cullen and Dykman, LLP, Brooklyn, N.Y. (Joseph Miller of counsel), for defendant-respondent New York City Housing Authority.

Malapero & Prisco, LLP, New York, N.Y. (Andrew L. Klauber of counsel), for defendant-respondent De Micco Brothers, Inc.

In an action to recover damages for personal injuries, the defendant Vales Construction Corp. appeals from an order of the Supreme Court, Kings County (Battaglia, J.), dated July 27, 2007, which denied, with leave to renew, its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

February 26, 2008

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ORDERED that the order is affirmed, with one bill of costs payable to the defendants-respondents appearing separately and filing separate briefs.

The plaintiff commenced this action against, among others, the defendant Vales Construction Corp. (hereinafter Vales) to recover damages allegedly sustained when he tripped and fell on an allegedly dangerous and defective sidewalk near the Bushwick Housing Complex in Brooklyn. The plaintiff alleged that Vales, inter alia, maintained and repaired the sidewalk. Vales moved for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. The Supreme Court denied the motion with leave to renew. We affirm.

In support of its motion, Vales relied, in the main, on information contained in “Preliminary Inspection Reports,” which it offered as business records. However, Vales failed to demonstrate the admissibility of the reports under the business records exception to the hearsay rule (see CPLR 4518[a]; *Matter of Leon RR*, 48 NY2d 117; *Johnson v Lutz*, 253 NY 124; *Hochhauser v Electric Ins. Co.*, 46 AD3d 174; *Vermont Commr. of Banking and Ins. v Welbilt Corp.*, 133 AD2d 396). In any event, even if the reports were admissible under that exception, Vales failed to demonstrate a prima facie entitlement to judgment as a matter of law. Thus, the motion was properly denied regardless of the sufficiency of the opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

Vales’ remaining contentions are without merit.

RITTER, J.P., FLORIO, CARNI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court