

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

D18444
W/prt

_____AD3d_____

Argued - November 19, 2007

STEVEN W. FISHER, J.P.
DAVID S. RITTER
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2006-07947

DECISION & ORDER

Alisha K. Afridi, etc., et al., appellants, v Glen Oaks
Village Owners, Inc., respondent.

(Index No. 16047/03)

Mark E. Weinberger, P.C., Great Neck, N.Y. (Mark J. Musman and Conrad Jordan
of counsel), for appellants.

Martin Clearwater & Bell LLP, New York, N.Y. (John L. A. Lyddane and Ellen B.
Fishman 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 (O'Donoghue, J.), entered July 11, 2006, which,
upon a jury verdict, is in favor of the defendant and against them dismissing the complaint. Justice
Ritter has been substituted for former Justice Krausman (22 NYCRR 670.1[c]).

ORDERED that the judgment is affirmed, with costs.

The infant plaintiff sustained second degree burns to her thighs and abdomen after
coming into contact with hot water from a faucet in the bathroom of her family's apartment. The
plaintiffs commenced this action against the cooperative corporation that owned the apartment where
the family resided, alleging negligence in the supply of excessively hot water to the apartment. At the
ensuing jury trial, the Supreme Court excluded from evidence a section of a police report indicating
that, 12 days after the accident, the hot water from the subject faucet registered a temperature of 160
degrees Fahrenheit. The report failed to supply any details, inter alia, about how the temperature
measurement was made.

March 11, 2008

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The Supreme Court providently exercised its discretion in denying the plaintiffs' request to admit the police report into evidence, where the plaintiffs failed to establish a proper foundation for its admission (*see People v Freeland*, 68 NY2d 699; *Sassone v Corhouse*, 129 AD2d 924). Contrary to the plaintiffs' contention, the mere fact that the report may have been a business record, as contemplated under CPLR 4518, "does not overcome any other exclusionary rule which might properly be invoked" (*People v Tortorice*, 142 AD2d 916, 918; *accord Bostic v State of New York*, 232 AD2d 837, 839).

The plaintiffs' remaining contention is without merit.

FISHER, J.P., RITTER, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court