

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

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_____AD3d_____

Submitted - February 19, 2008

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-06198

DECISION & ORDER

Esnidia Andrini, respondent, v Frank Navarra, et al.,
appellants.

(Index No. 20013/05)

Abrams, Gorelick, Friedman & Jacobson, P.C., New York, N.Y. (Bridget Quinn of counsel), for appellants.

Dell & Little, LLP, Uniondale, N.Y. (Jennifer J. Bock of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Kitzes, J.), dated June 5, 2007, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

In order to prevail on their motion for summary judgment in this action involving a fall upon an allegedly defective stairway, the defendants were ““required to establish as a matter of law that they maintained the property in question in a reasonably safe condition and that they neither created the allegedly dangerous condition existing thereon nor had actual or constructive notice thereof”” (*see Mokszi v Pratt*, 13 AD3d 709, 710, quoting *Richardson v Rotterdam Sq. Mall*, 289 AD2d 679, 679; *Hyman v Queens County Bancorp*, 307 AD2d 984, 986, *affd* 3 NY3d 743). To give rise to constructive notice, a defect must be visible and apparent and must exist for a sufficient length of time before the accident to permit the defendant to discover and remedy it (*see Gordon v American Museum of Natural History*, 67 NY2d 836). Only after the defendants have satisfied their threshold burden will the court examine the sufficiency of the plaintiff’s opposition papers (*see Winegrad v New*

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York Univ. Med. Ctr., 64 NY2d 851; *Soto-Lopez v Board of Mgrs. of Crescent Tower Condominium*, 44 AD3d 846).

Here, the defendants failed to submit evidence sufficient to make a prima facie showing of entitlement to judgment as a matter of law. Thus, the Supreme Court properly denied their motion for summary judgment dismissing the complaint.

The defendants' remaining contentions are without merit.

RIVERA, J.P., RITTER, CARNI and LEVENTHAL, 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