

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

D19544
Y/kmg

_____AD3d_____

Argued - May 12, 2008

HOWARD MILLER, J.P.
MARK C. DILLON
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2007-06372

DECISION & ORDER

Ramis Macelara, et al., respondents,
v Annamaria Gallo, et al., appellants.

(Index No. 21516/04)

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum] of counsel), for appellants.

Michael A. Forzano, Brooklyn, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from so much of an order of the Supreme Court, Kings County (Ambrosio, J.), dated June 25, 2007, as denied their motion for summary judgment dismissing the complaint.

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

Contrary to the defendants' contention on appeal, their motion for summary judgment did not rely on the argument that they were entitled to summary judgment either because they lacked notice of the alleged defect or because the defect was open and obvious. Rather, the defendants only argued that they were owners of a single family dwelling, who did not supervise or control the injured plaintiff's work or methods. Since the former contention was not raised before the Supreme Court, it is not properly before this Court (*see Wray v Mallilo & Grossman*, _____AD3d_____, 2008 NY Slip Op 6557 [2d Dept 2008]; *Bennett v Long Is. Jewish Med. Ctr.*, _____AD3d_____, 2008 NY Slip Op 4823 [2d Dept 2008]).

MILLER, J.P., DILLON, BALKIN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 2, 2008

MACELARA v GALLO