

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

D20930
C/kmg

_____AD3d_____

Argued - October 14, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2007-11135

DECISION & ORDER

Durpattee Chunnulal, et al., respondents,
v David P. Rosen, et al., defendants,
Jamaica Hospital Medical Center, appellant.

(Index No. 5907/05)

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Nicholas R. Caiazzo, Richard E. Lerner, and Bianca Michelis of counsel), for appellant.

Durpattee Chunnulal and Makhanlall Chunnulal, South Richmond Hill, N.Y., respondents pro se.

In an action to recover damages for personal injuries, etc., the defendant Jamaica Hospital Medical Center appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Weiss, J.), dated October 9, 2007, as denied that branch of its motion which was for summary judgment dismissing the cause of action premised upon negligent maintenance, operation, and control of its premises insofar as asserted against it.

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

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, citing *Zuckerman v City of New York*, 49 NY2d 557, 562). Here, the defendant failed to make such a showing, requiring the denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

November 5, 2008

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We have not considered the plaintiffs' contention that the Supreme Court erred in dismissing the cause of action grounded on vicarious liability, as the plaintiffs failed to cross-appeal from the Supreme Court's order (*see generally Hecht v City of New York*, 60 NY2d 57).

SKELOS, J.P., RITTER, CARNI and DICKERSON, 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