

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

D22226
O/prt

_____AD3d_____

Argued - January 15, 2009

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2008-04768

DECISION & ORDER

Jane Danapas, respondent, v Temco
Service Industries, Inc., appellant.

(Index No. 34279/05)

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Harry Steinberg and Steven B. Prystowsky), for appellant.

Taubman Kimelman & Soroka, LLP, New York, N.Y. (Antonette M. Milcetic of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Hurkin-Torres, J.), dated March 19, 2008, which denied its renewed motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the renewed motion for summary judgment dismissing the complaint is granted.

The plaintiff allegedly was injured when she slipped and fell on debris while descending an exterior staircase at a school. The plaintiff commenced this action against the defendant, which was under contract to provide custodial services at the school, and the defendant moved for summary judgment dismissing the complaint. That motion was denied without prejudice to renew.

In support of the renewed motion for summary judgment, the defendant established its prima facie entitlement to judgment as a matter of law by presenting evidence that it neither created nor had actual or constructive notice of the condition that allegedly caused the plaintiff to fall (*see Gordon v American Museum of Natural History*, 67 NY2d 836; *Roveccio v Oak Park at*

March 3, 2009

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Douglaston Unit Owners Assn., Inc., 51 AD3d 999). The evidence submitted by the plaintiff in opposition failed to raise a triable issue of fact as to whether the defendant had actual notice of a recurrent dangerous condition, consisting of debris on the staircase, and thus was chargeable with constructive notice of each specific occurrence of the condition (*see Roveccio v Oak Park at Douglaston Unit Owners Assn., Inc.*, 51 AD3d at 1000; *Stone v Long Is. Jewish Med. Ctr.*, 302 AD2d 376; *Andujar v Benenson Inv. Co.*, 299 AD2d 503). Accordingly, the Supreme Court should have granted the defendant's renewed motion for summary judgment dismissing the complaint.

PRUDENTI, P.J., DILLON, COVELLO 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