

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

D23117
G/kmg

_____AD3d_____

Submitted - March 19, 2009

A. GAIL PRUDENTI, P.J.
FRED T. SANTUCCI
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2008-03300

DECISION & ORDER

Justin Alexander, respondent, v Rum Point
Tavern, Inc., a/k/a Rhumblin Restaurant,
et al., appellants, et al., defendant.

(Index No. 24302/04)

Kardisch, Link & Associates, P.C., Mineola, N.Y. (Matthew M. Frank of counsel),
for appellant Rum Point Tavern, Inc., a/k/a Rhumblin Restaurant.

Vincent D. McNamara, East Norwich, N.Y. (Anthony Marino of counsel), for
appellant Port Partners, Inc.

Leslie Tenzer, Babylon, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant Rum Point
Tavern, Inc., a/k/a Rhumblin Restaurant, appeals, as limited by its brief, and the defendant Port
Partners, Inc., separately appeals, as limited by its brief, from so much of an order of the Supreme
Court, Suffolk County (Molia, J.), dated March 11, 2008, as denied their separate motions for
summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the order is affirmed, with one bill of costs.

Contrary to the appellants' contentions, they failed to satisfy their burden of
establishing, prima facie, that the complained-of condition was not defective, or that they had no
notice of a defective condition (*see Kucevic v Three Park Ave. Bldg. Co., L.P.*, 55 AD3d 792; *Kucera
v Waldbaums Supermarkets*, 304 AD2d 531; *cf. Mansfield v Dolcemasclo*, 34 AD3d 763). The

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deposition testimony of both appellants' principals demonstrates that each appellant had knowledge of the manner in which the complained-of condition was constructed.

The appellants' remaining contentions are without merit.

PRUDENTI, P.J., SANTUCCI, FLORIO and BELEN, 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