

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

D23467
Y/prt

_____AD3d_____

Argued - March 6, 2009

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
FRED T. SANTUCCI
THOMAS A. DICKERSON, JJ.

2008-06053

DECISION & ORDER

Mikhail Shkolnik, respondent, v
Alfonso Longo, appellant, et al.,
defendant.

(Index No. 12251/05)

Faust Goetz Schenker & Blee, LLP, New York, N.Y. (Matthew Stein of counsel), for
appellant.

William Pager, Brooklyn, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant Alfonso Longo appeals from an order of Supreme Court, Kings County (Held, J.), dated May 8, 2008, which denied his motion for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured when the water running from the faucet in his bathtub suddenly became extremely hot, causing serious burns to his ankles and feet. He subsequently commenced this action against the owners of the subject building, alleging, among other things, that they were negligent in the maintenance of the boiler and the hot water system, and that the rapid fluctuations in water temperature constituted a dangerous condition. The defendant Alfonso Longo, who was one of the owners, moved for summary judgment dismissing the complaint insofar as asserted against him, contending that no defective condition existed and that, in any event, he had no actual or constructive notice of the alleged dangerous condition. The Supreme Court denied the motion, finding that triable issues of fact existed on the issue of liability. We agree.

June 9, 2009

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In opposition to the appellant's prima facie showing of entitlement to summary judgment, the plaintiff raised a triable issue of fact regarding the existence of a dangerous condition (see *Rosencrans v Kiselak*, 52 AD3d 492; *Terry v Danisi Fuel Oil Co., Inc.*, 40 AD3d 1072; cf. *Savory v 2120 Realty Co., LLC*, _____AD3d_____, 2009 NY Slip Op 01517 [1st Dept 2009]). The plaintiff came forward with, inter alia, the affidavit of Mark Kanevsky, a contractor with experience installing and repairing hot water systems, who claimed that the building's water was subject to unsafe temperature fluctuations without a "mixing valve" installed on the boiler (see *Terry*, 40 AD3d at 1073).

The plaintiff also raised a triable issue of fact as to whether the appellant had actual notice of the alleged defective condition by submitting evidence that, "a minimum of three times" before he was injured, he complained that the water would suddenly change from cold to hot (see *Aguirre v Paul*, 54 AD3d 302, 303).

SPOLZINO, J.P., SKELOS, SANTUCCI and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court