

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

D23544
Y/kmg

_____AD3d_____

Argued - May 4, 2009

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2009-00635

DECISION & ORDER

Angela Lalicata, et al., respondents,
v 39-15 Skillman Realty Co., LLC, et al.,
appellants.

(Index No. 8744/06)

London Fischer, LLP, New York, N.Y. (Anthony F. Tagliagambe, Brian A. Kalman,
and Hanna L. Schwartz of counsel), for appellants.

Mark E. Weinberger, P.C., Rockville, Centre, N.Y. (Marc J. Musman of counsel), for
respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from
an order of the Supreme Court, Queens County (Rosengarten, J.), dated November 13, 2008, which
denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On November 21, 2005, the plaintiff Angela Lalicata (hereinafter the plaintiff)
allegedly was injured when she tripped and fell on a cracked or chipped step while descending a
staircase in a building owned by the defendants, 39-15 Skillman Realty Co., LLC, and Skillman Realty
Co. The plaintiff used this staircase to access the basement of the building, which her employer,
Brooks Brothers, Inc. (hereinafter Brooks Brothers), leased from the defendants. After
commencement of the instant action, the defendants moved for summary judgment dismissing the
complaint. The Supreme Court denied the motion, and we affirm.

“An out-of-possession landlord is not liable for injuries that occur on its premises

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unless it retains control over the premises or is contractually bound to repair unsafe conditions” (*Taylor v Lastres*, 45 AD3d 835; *see Dunitz v J.L.M. Consulting Corp.*, 22 AD3d 455; *Roveto v VHT Enters., Inc.*, 17 AD3d 341, 341-342; *Scott v Bergstol*, 11 AD3d 525, 526). Here, the Supreme Court properly determined that the defendants failed to establish their prima facie entitlement to judgment as a matter of law by demonstrating that they did not maintain control of the subject staircase or that they were not contractually obligated by their lease to maintain or repair the allegedly defective condition thereat (*see Ever Win, Inc. v 1-10 Indus. Assoc., LLC*, 33 AD3d 845; *Zeppetelli v 1372 Broadway, LLC*, 8 AD3d 665). Although the defendants established, inter alia, that they did not retain an office in the building and that employees of Brooks Brothers were responsible for painting and sweeping the staircase, they failed to provide a complete copy of the lease between the defendants and Brooks Brothers demonstrating their lack of control or contractual obligation to maintain the stairs (*see Robinson v City of New York*, 37 AD3d 447, 448; *Rosas v 397 Broadway Corp.*, 19 AD3d 574; *Winby v Kustas*, 7 AD3d 615).

MASTRO, J.P., DILLON, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court