

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

D24153
T/hu

_____AD3d_____

Submitted - May 22, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2008-06095

DECISION & ORDER

Giacomo Camarda, et al., respondents, v Sputnik
Restaurant Corp., d/b/a Esquire Diner, et al.,
appellants.

(Index No. 22426/05)

Mitchell & Incantalupo, Forest Hills, N.Y. (Thomas V. Incantalupo of counsel), for
appellants.

Miller, Montiel & Strano, P.C., Roslyn Heights, N.Y. (David M. Strano 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 (Dorsa, J.), entered May 19, 2008, which denied their
motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiffs commenced this action to recover damages for injuries allegedly
sustained as a result of a slip-and-fall accident on the exterior stairs leading to the entrance of the
defendants' diner. The plaintiffs allege that it was raining on the day of the accident, which made the
stairs in question — outdoor steps exposed to weather conditions — slippery and dangerous. The
Supreme Court denied the defendants' motion for summary judgment dismissing the complaint. We
affirm.

August 11, 2009

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The defendants did not establish their prima facie entitlement to summary judgment, as they failed to refute the plaintiffs' contention that New York City Administrative Code § 27-376, which requires roofing over certain exterior stairs, was applicable to the stairs on which the fall occurred (*see Mansfield v Dolcemascolo*, 34 AD3d 763, 764; *Savarese v Sacred Hearts & St. Stephen's Church*, 309 AD2d 848; *Gaston v New York City Hous. Auth.*, 258 AD2d 220), or establish that the lack of roofing over the stairs was not a proximate cause of the accident (*see Avina v Verburg*, 47 AD3d 1188, 1188-1189; *Chapman-Raponi v Vescio*, 11 AD3d 1042, 1043; *Viscusi v Fenner*, 10 AD3d 361, 361-362). Therefore, we need not consider the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Cen.*, 64 NY2d 851, 852; *Lesocovich v 180 Madison Ave. Cons.*, 81 NY2d 982, 985). As such, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint.

SKELOS, J.P., SANTUCCI, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court