

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

D24240
G/kmg

_____AD3d_____

Argued - June 22, 2009

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
MARK C. DILLON
JOSEPH COVELLO, JJ.

2008-11652

DECISION & ORDER

Angelo Desena, et al., respondents, v Federated
Department Stores, Inc., et al., defendants, Ultimate
Services, Inc., et al., appellants.

(Index No. 13010/05)

Molod Spitz & DeSantis, P.C., New York, N.Y. (Salvatore J. DeSantis and Marcy
Sonneborn of counsel), for appellants.

Simon Lesser PC, New York, N.Y. (Leonard F. Lesser of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants Ultimate
Services, Inc., and USI Building Services Nationwide appeal from an order of the Supreme Court,
Kings County (Martin, J.), dated November 17, 2008, which denied their renewed motion for
summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

The injured plaintiff, Angelo Desena, allegedly sustained injuries when he tripped and
fell over a piece of wood in an emergency staircase at his employer's premises. As a result, the
injured plaintiff and his wife, suing derivatively, commenced this action against, among others, the
defendants Ultimate Services, Inc., and USI Building Services Nationwide (hereinafter together the
appellants), which provided cleaning services in those premises. The appellants made a renewed
motion for summary judgment dismissing the complaint insofar as asserted against them, contending
that they had no duty to maintain the emergency staircase and that they did not create the alleged
hazardous condition or have actual or constructive notice of it. The Supreme Court denied the

August 25, 2009

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motion, and we affirm.

The appellants satisfied their burden of establishing, prima facie, their entitlement to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). In opposition, the plaintiffs submitted sufficient proof to establish that triable issues of fact exist as to whether the appellants had a duty to maintain the emergency staircase and whether they had constructive notice of the alleged hazardous condition. Accordingly, the Supreme Court properly denied the appellants' renewed motion for summary judgment dismissing the complaint insofar as asserted against them.

SPOLZINO, J.P., SKELOS, DILLON and COVELLO, 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