

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

D24586  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 22, 2009

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

2008-04583

DECISION & ORDER

Eric Travers, appellant, v Charles H. Greenthal  
Management Corp., et al., respondents.

(Index No. 17307/05)

Certain & Zilberg, PLLC, New York, N.Y. (Michael A. Zilberg of counsel), for  
appellant.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Patrick J.  
Lawless of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited  
by his brief, from so much of an order of the Supreme Court, Kings County (Ruchelsman, J.), dated  
March 28, 2008, as granted that branch of the defendants' motion which was for summary judgment  
dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the plaintiff's contention, the Supreme Court properly granted that branch  
of the defendants' motion which was for summary judgment dismissing the complaint. To hold a  
landlord liable for a hazardous condition upon its property, a plaintiff must show that the landlord  
either created the condition or had actual or constructive notice of its existence (*see Jackson v City  
of New York*, 55 AD3d 546, 547; *Plakstis v Lighthouse, LLC*, 37 AD3d 573, 573-574).

Here, the defendants established their prima facie entitlement to judgment as a matter

October 13, 2009

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of law by demonstrating that they neither created nor had actual or constructive notice of an alleged toxic mold condition in the plaintiff's apartment (*see Litwack v Plaza Realty Invs., Inc.*, 11 NY3d 820, 821-822; *Beck v J.J.A. Holding Corp.*, 12 AD3d 238, 239-240). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the complaint (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

RIVERA, J.P., FLORIO, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court