

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

D24746
C/kmg

_____AD3d_____

Argued - September 23, 2009

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2008-08033

DECISION & ORDER

Darius Kociecki, respondent, v EOP-Midtown Properties, LLC, defendant, Paul, Hastings, Janofsky & Walker, LLP, appellant (and a third-party action).

(Index No. 30296/05)

Hoey, King, Toker & Epstein (Mischel & Horn, P.C., New York, N.Y. [Scott T. Horn], of counsel), for appellant.

Law Offices of Edmond C. Chakmakian, P.C., Hauppauge, N.Y. (Anne Marie Caradonna of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Paul, Hastings, Janofsky & Walker, LLP, appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), dated July 15, 2008, as denied that branch of its motion which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the defendant Paul, Hastings, Janofsky & Walker, LLP, which was for summary judgment dismissing the complaint insofar as asserted against it is granted.

The plaintiff allegedly slipped while descending a marble staircase in premises leased by the defendant Paul, Hastings, Janofsky & Walker, LLP (hereinafter the defendant). The plaintiff stated, during his deposition, that the staircase was free of any foreign substance or cracks. “[I]n the absence of evidence of a negligent application of floor wax or polish, the mere fact that a smooth floor may be slippery does not support a cause of action to recover damages for negligence” (*Mroz*

October 27, 2009

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v Ella Corp., 262 AD2d 465, 466), and the defendant submitted evidence sufficient to establish its entitlement to judgment as a matter of law (see *Murphy v Conner*, 84 NY2d 969; *German v Campbell Inn*, 37 AD3d 405; *Palermo v Roman Catholic Diocese of Brooklyn, N.Y.*, 20 AD3d 516; *Rodriguez v Kimco Centereach 605*, 298 AD2d 571; *Lindeman v Vecchione Constr. Corp.*, 275 AD2d 392). In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff's contention that the staircase was in violation of Administrative Code of the City of New York § 27-375(h) was improperly raised for the first time in opposition to the motion (see *Medina v Sears, Roebuck & Co.*, 41 AD3d 798, 800; *Mainline Elec. Corp. v Pav-Lak Indus., Inc.*, 40 AD3d 939, 939-940). In any event, Administrative Code § 27-375(h) is not applicable to this staircase since it did not serve as a required exit from the building (see Administrative Code §§ 27-232, 27-375; *Schwartz v Hersh*, 50 AD3d 1011; *Dooley v Vornado Realty Trust*, 39 AD3d 460; *Weiss v City of New York*, 16 AD3d 680, 681-682; *Walker v 127 W. 22nd St. Assoc.*, 281 AD2d 539).

MASTRO, J.P., DICKERSON, ENG and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court