

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

D25157
O/kmg

_____AD3d_____

Argued - October 29, 2009

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2008-09086

DECISION & ORDER

Jennifer Goren, respondent,
v 764 Madison Avenue, LLC, appellant.

(Index No. 30576/06)

Kaufman Borgeest & Ryan, LLP, New York, N.Y. (Dennis J. Dozis of counsel), for appellant.

Fischer & Burstein, P.C., Kew Gardens, N.Y. (Steven Herschkowitz and Francisco D. Savinon, Jr., of counsel) for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Knipel, J.), dated September 12, 2008, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff slipped and fell down several stairs while descending a staircase in a building owned by the defendant, sustaining personal injuries. At her deposition, the plaintiff testified that when she started to fall, there was no way for her to grab onto the bannister, which was to the right of the staircase. She elaborated, "it's more like my hand is on the wall." The defendant subsequently moved for summary judgment dismissing the complaint. The Supreme Court denied the motion, and we affirm.

The defendant failed to make a prima facie showing of its entitlement to judgment as a matter of law. The evidence submitted by the defendant failed to eliminate all issues of fact as to

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whether the defendant violated the Administrative Code of the City of New York § 27-375(f) by not providing proper handrails and, if so, whether the lack of proper handrails was a proximate cause of the plaintiff's accident (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Ocasio v Board of Educ. of City of N.Y.*, 35 AD3d 825; *Grayson v Hall*, 31 AD3d 606, 607). Under these circumstances, it is not necessary to consider the sufficiency of the plaintiff's opposition papers (*see Tchjevskiaia v Chase*, 15 AD3d 389).

RIVERA, J.P., DICKERSON, HALL and LOTT, 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