

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

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_____AD3d_____

Argued - November 30, 2009

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2009-00370

DECISION & ORDER

Joseph Stile, et al., appellants, v Jen Marine Development, LLC, d/b/a Gateway Marina, respondent (and a third-party action).

(Index No. 8985/06)

Angiuli Katkin & Gentile, LLP, Staten Island, N.Y. (Joelle T. Jensen and Jeannette Poyerd of counsel), for appellants.

Gallo Vitucci Klar, LLP, New York, N.Y. (Yolanda L. Ayala and Richard J. Gallo of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Saitta, J.), dated November 25, 2008, as, in effect, upon reargument, adhered to its original determination in an order of the same court dated September 4, 2008, granting the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order dated November 25, 2008, is affirmed insofar as appealed from, with costs.

As the Supreme Court reviewed the merits on the plaintiffs' motion for leave to reargue, the court, in effect, granted reargument and adhered to its original determination. Therefore, the order dated November 25, 2008, made upon reargument, is appealable (*see Matter of Mattie M. v Administration for Children's Servs.*, 48 AD3d 392, 393; *McNeil v Dixon*, 9 AD3d 481).

January 12, 2010

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STILE v JEN MARINE DEVELOPMENT, LLC, d/b/a GATEWAY MARINA

The defendant established its entitlement to judgment as a matter of law by demonstrating, prima facie, that it did not create and did not have actual or constructive notice of the presence of two raised or popped screws, which allegedly caused plaintiff Joseph Stile to fall on a new “Y” dock of the defendant’s marina.

The plaintiffs, in response to the defendant’s prima facie showing, failed to raise a triable issue of fact (*see Yarborough v City of New York*, 28 AD3d 650, 651, *affd* 10 NY3d 726; *Dennehy-Murphy v Nor-Topia Serv. Ctr., Inc.*, 61 AD3d 629; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320).

SKELOS, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court