

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

D25756  
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Argued - December 10, 2009

REINALDO E. RIVERA, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2009-02545

DECISION & ORDER

Anjell D. Bowers, respondent, v Northwestern Realty  
Limited Partnership, appellant.

(Index No. 8680/07)

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Gordon & Silber, P.C., New York, N.Y. (William L. Hahn and Andrew B. Kaufman  
of counsel), for appellant.

Michael S. Lamonsoff, New York, N.Y. (Stacey Haskel and Tara Ulezalka 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 (Kramer, J.), dated January 20, 2009, which denied its  
motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff alleges that she slipped and fell on an oily substance on the steps of an  
interior stairway in the apartment building in which she resided, which is owned by the defendant.  
After joinder of issue, the defendant moved for summary judgment dismissing the complaint on the  
ground that it did not create or have actual or constructive notice of the allegedly hazardous  
condition. In support of its motion, the defendant relied, in pertinent part, on the deposition  
testimony of the plaintiff and the building's porter. Notably, at her deposition, the plaintiff testified  
that the substance was colorless and smelled like a cleaning product, while the building's porter  
testified that she cleaned the building's interior stairways every other day with a mixture of water and  
liquid pine soap. The Supreme Court denied the motion, finding that while the defendant established,

prima facie, through the deposition testimony of the building's porter, that it did not create the allegedly hazardous condition or have notice thereof, in opposition, the plaintiff raised a triable issue of fact through the deposition testimony of both the plaintiff and the building's porter, as to whether the defendant created the alleged hazard. We affirm, but on a different ground.

Contrary to the Supreme Court's determination, the deposition testimony of the plaintiff and the building's porter, which the defendant submitted in support of its motion for summary judgment, failed to eliminate all issues of fact as to whether the defendant created the allegedly hazardous condition that caused the plaintiff to slip and fall. Accordingly, the defendant failed to meet its burden of establishing, prima facie, its entitlement to judgment as a matter of law (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the sufficiency of the plaintiff's papers need not be addressed (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Tchjevskaja v Chase*, 15 AD3d 389).

RIVERA, J.P., LEVENTHAL, BELEN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court