

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

D25934
C/kmg

_____AD3d_____

Argued - December 21, 2009

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-04857
2009-07158

DECISION & ORDER

Kenneth Ford, et al., appellants, v Benevolent &
Protective Order of Elks, etc., respondent.

(Index No. 572/08)

Goldblatt & Associates, P.C., Mohegan Lake, N.Y. (Kenneth B. Goldblatt of
counsel), for appellants.

Spiegel, Brown, Fichera & Coté, LLP, Poughkeepsie, N.Y. (Michael A. Coté of
counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal (1)
from an order of the Supreme Court, Putnam County (O'Rourke, J.), dated April 21, 2009, which
granted the defendant's motion for summary judgment dismissing the complaint, and (2), as limited
by their brief, from so much of an order of the same court dated June 19, 2009, as, upon reargument,
adhered to the original determination.

ORDERED that the appeal from the order dated April 21, 2009, is dismissed, as that
order was superseded by the order dated June 19, 2009, made upon reargument; and it is further,

ORDERED that the order dated June 19, 2009, is affirmed insofar as appealed from;
and it is further,

ORDERED that one bill of costs is awarded to the defendant.

February 2, 2010

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FORD v BENEVOLENT & PROTECTIVE ORDER OF ELKS

The plaintiffs commenced this personal injury action after the injured plaintiff tripped and fell on a stair at the defendant's premises. The plaintiffs alleged that the injured plaintiff's alleged injuries were caused by the lack of a handrail, and that a handrail was required by law.

In moving for summary judgment dismissing the complaint, the defendant demonstrated its prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), by establishing that it was not negligent. In this regard, the defendant established that a handrail was not required by Putnam County or local law (*cf. Velez v 955 Tenants Stockholders, Inc.*, 66 AD3d 1005, 1006; *Swedlow v WSK Props. Corp.*, 5 AD3d 587, 587-588). In opposing the motion, and in moving for leave to reargue, the plaintiff failed to demonstrate the existence of a triable issue of fact as to whether the defendant was negligent (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324). Accordingly, upon reargument, the Supreme Court properly adhered to its original determination granting the defendant's motion for summary judgment dismissing the complaint.

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court