

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

D26307
G/kmg

_____AD3d_____

Argued - January 19, 2010

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2009-05013

DECISION & ORDER

Juan Zapata, appellant, v Louie's Seafood
Restaurant, LLC, d/b/a Louie's, respondent.

(Index No. 12147/06)

Bornstein & Emanuel, P.C. (Anita Nissan Yehuda, P.C., Roslyn Heights, N.Y., of
counsel), for appellant.

Furey, Kerley, Walsh, Matera & Cinquemani, P.C., Seaford, N.Y. (Lauren B. Bristol
of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited
by his brief, from so much of an order of the Supreme Court, Nassau County (Murphy, J.), dated
March 31, 2009, as, upon renewal, in effect, vacated a prior determination in an order dated
December 17, 2008, denying the defendant's motion for summary judgment dismissing the complaint,
and thereupon granted the defendant's motion.

ORDERED that the order dated March 31, 2009, is reversed insofar as appealed from,
on the law, and, upon renewal, the order dated December 17, 2008, denying the defendant's motion
for summary judgment dismissing the complaint is adhered to.

The Supreme Court erred in finding, upon renewal, that the defendants established
their prima facie entitlement to judgment as a matter of law by demonstrating that the complained-
of condition did not constitute a dangerous or defective condition on the subject property (*cf. Cirino*

March 2, 2010

Page 1.

ZAPATA v LOUIE'S SEAFOOD RESTAURANT, LLC, d/b/a LOUIE'S

v Greek Orthodox Community of Yonkers, 193 AD2d 576). Accordingly, upon renewal, the Supreme Court should have adhered to its original determination denying the defendant's motion.

SKELOS, J.P., COVELLO, BALKIN and AUSTIN, 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