

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

D26769
Y/prt

_____AD3d_____

Argued - March 16, 2010

JOSEPH COVELLO, J.P.
ANITA R. FLORIO
HOWARD MILLER
RANDALL T. ENG, JJ.

2009-01685

DECISION & ORDER

Angelina Aprea-Smith, et al., appellants,
v Mike Smith, respondent.

(Index No. 2667/07)

Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Stephen C. Glasser of counsel), for appellants.

Richard T. Lau, Jericho, N.Y. (Nancy S. Goodman of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Starkey, J.), dated January 13, 2009, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The injured plaintiff and her husband, suing derivatively, commenced this action to recover damages for personal injuries allegedly sustained by the injured plaintiff when she fell while descending an interior staircase within residential premises the plaintiffs leased from the defendant. At her deposition, the injured plaintiff testified that she could not explain how she fell.

The defendant made a prima facie showing of entitlement to judgment as a matter of law by establishing that the injured plaintiff was unable to identify the cause of her fall (*see Lissauer v Shaarei Halacha, Inc.*, 37 AD3d 427, 427). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Lissauer v Shaarei Halacha, Inc.*, 37

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AD3d at 427). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

COVELLO, J.P., FLORIO, MILLER and ENG, 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