

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

D26899  
G/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 18, 2010

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
HOWARD MILLER  
CHERYL E. CHAMBERS, JJ.

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2009-05381

DECISION & ORDER

Helen Alston, respondent, v Starrett City Associates,  
et al., appellants.

(Index No. 24770/07)

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Brody, Benard & Branch LLP, New York, N.Y. (Tanya M. Branch and Mary Ellen O'Brien of counsel), for appellants.

Lawrence Perry Biondi, White Plains, N.Y. (Richard Mandel of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (F. Rivera, J.), dated May 1, 2009, which denied their motion for summary judgment dismissing the complaint and granted the plaintiff's cross motion for leave to amend her bill of particulars.

ORDERED that the order is affirmed, with costs.

A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it did not create the condition on which the plaintiff slipped, and did not have actual or constructive notice of that condition (*see Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598; *Soto-Lopez v Board of Mgrs. of Crescent Tower Condominium*, 44 AD3d 846; *Marshall v Jeffrey Mgt. Corp.*, 35 AD3d 399, 400). Here, the defendants failed to make a prima facie showing that they lacked constructive notice of the puddle upon which the plaintiff allegedly slipped and fell, as they offered no evidence to establish when the staircase upon which the plaintiff slipped was last inspected or cleaned relative to the time when the plaintiff fell (*see*

April 13, 2010

Page 1.

ALSTON v STARRETT CITY ASSOCIATES

*Birnbaum v New York Racing Assn., Inc.*, 57 AD3d at 598-599; *Soto-Lopez v Board of Mgrs. of Crescent Tower Condominium*, 44 AD3d at 847; *Marshall v Jeffrey Mgt. Corp.*, 35 AD3d at 400).

Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment.

The defendants' remaining contentions are without merit.

RIVERA, J.P., COVELLO, MILLER and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court