

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

D28023
H/kmg

_____AD3d_____

Argued - June 11, 2010

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
SANDRA L. SGROI, JJ.

2009-10509

DECISION & ORDER

Beatriz Fuentes, respondent, v Ardenwood
Enterprises, et al., appellants.

(Index No. 9787/05)

McAndrew, Conboy & Prisco, LLP, Woodbury, N.Y. (Mary C. Azzaretto of
counsel), for appellants.

Dell, Little, Trovato & Vecere, LLP, Bohemia, N.Y. (Keri A. Wehrheim of counsel),
for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Suffolk County (Pastoressa, J.), dated September 30, 2009, which
denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

“An out-of-possession landlord is not liable for injuries that occur on its premises
unless it retains control over the premises or is contractually bound to repair unsafe conditions”
(*Lalicata v 39-15 Skillman Realty Co., LLC*, 63 AD3d 889, 890, quoting *Taylor v Lastres*, 45 AD3d
835, 835). Here, the Supreme Court properly denied the defendants’ motion for summary judgment
dismissing the complaint, since they failed to submit evidence sufficient to establish, prima facie, that
they had no contractual duty to repair the alleged defective condition and that, in any event, they had
no notice of the alleged defective condition (*see Lalicata v 39-15 Skillman Realty Co., LLC*, 63

June 29, 2010

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AD3d 889; *Rosas v 397 Broadway Corp.*, 19 AD3d 574; *Winby v Kustas*, 7 AD3d 615; *Sutherland v Whyllie*, 292 AD2d 518).

COVELLO, J.P., ANGIOLILLO, LEVENTHAL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court