

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

D29037  
W/kmb

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

Submitted - September 30, 2010

WILLIAM F. MASTRO, J.P.  
JOSEPH COVELLO  
THOMAS A. DICKERSON  
SHERI S. ROMAN, JJ.

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2009-10912

DECISION & ORDER

Jose Checo, respondent, v 452-53rd St. Realty Corp., appellant.

(Index No. 32639/05)

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Barry, McTiernan & Moore, New York, N.Y. (David H. Schultz and Suzanne M. Halbardier of counsel), for appellant.

Gorayeb & Associates, P.C., New York, N.Y. (Roy A. Kuriloff of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Jacobson, J.), dated September 11, 2009, which denied that branch of its motion which was for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced the instant action to recover damages for injuries he allegedly sustained when he slipped and fell as a result of a broken, downwardly-sloped stair at the top of a staircase in a building owned by the defendant. To demonstrate its entitlement to judgment as a matter of law, the defendant had to establish, prima facie, that its agents or employees neither created the allegedly defective condition that caused the accident, nor had actual or constructive notice of that condition for a sufficient length of time to discover and remedy it (*see Przywalny v New York City Tr. Auth.*, 69 AD3d 598, 598-599; *Joseph v New York City Tr. Auth.*, 66 AD3d 842, 843). However, the defendant failed to establish its prima facie entitlement to judgment as a matter of law (*see Przywalny v New York City Tr. Auth.*, 69 AD3d at 598-599). Accordingly, the Supreme Court

November 16, 2010

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properly denied that branch of the defendant's motion which was for summary judgment dismissing the complaint, without regard to the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 852; *Przytywalny v New York City Tr. Auth.*, 69 AD3d at 599).

MASTRO, J.P., COVELLO, DICKERSON and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court