

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

D29454
H/kmb

_____AD3d_____

Argued - December 3, 2010

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-05948

DECISION & ORDER

Jack Eaker, et al., respondents, v Long Island
American Water Company, appellant.

(Index No. 2010/09)

Thomas J. LaFauci, P.C., Hauppauge, N.Y. (Victor A. Carr of counsel), for appellant.

Philip J. Rizzuto, P.C., Carle Place, N.Y. (Kristen N. Reed of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Nassau County (McCarty III, J.), entered May 6, 2010, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A water main, located under the plaintiffs' property, allegedly burst and undermined a brick driveway, causing the plaintiff Jack Eaker (hereinafter the plaintiff) to fall and sustain injuries when he stepped onto the driveway. The plaintiff and his wife, suing derivatively, commenced this action to recover damages for personal injuries against the defendant water company, which owned and operated the subject water main.

The defendant failed to satisfy its prima facie burden of establishing its entitlement to judgment as a matter of law, as it failed to show that it did not negligently install the subject water main (*see De Witt Props. v City of New York*, 44 NY2d 417, 424; *Welch v Norman*, 282 AD2d 448,

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449). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint, and we need not consider the sufficiency of the plaintiffs' opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 852).

SKELOS, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court