

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

D29951
G/prt

_____AD3d_____

Argued - January 20, 2011

A. GAIL PRUDENTI, P.J.
REINALDO E. RIVERA
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2010-03685

DECISION & ORDER

Mary Gubitosi, respondent, v Pulte Homes of
New York, LLC, appellant.

(Index No. 12856/08)

Bonner Kiernan Trebach & Crociata, LLP, New York, N.Y. (Ewan M. Clark of
counsel), for appellant.

Katz & Kreinces, LLP, Mineola, N.Y. (Lawrence K. Katz of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an
order of the Supreme Court, Suffolk County (Spinner, J.), entered March 25, 2010, which denied its
motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly injured herself while taking a tour of a house under construction
that was to be purchased by her daughter. She subsequently commenced this action against the seller,
alleging, inter alia, that the defendant was negligent in guiding the plaintiff though the partially
constructed premises without warning her of a step between the hallway of the first floor and the
garage, and in failing to mark the step by a sign, change in color, or other device sufficient to alert
her to the change in elevation.

The Supreme Court properly denied the defendant's motion for summary judgment
dismissing the complaint. The defendant failed to make a prima facie showing of its entitlement to
judgment as a matter of law (*see Roros v Oliva*, 54 AD3d 398, 399-400; *Scher v Stropoli*, 7 AD3d

777; *Chafoulias v 240 E. 55th St. Tenants Corp.*, 141 AD2d 207, 208). The defendant's failure to make such a showing required the denial of the motion, regardless of the sufficiency of the opposing papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

PRUDENTI, P.J., RIVERA, LOTT and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court