

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

D32005
Y/prt

_____AD3d_____

Argued - June 8, 2011

JOSEPH COVELLO, J.P.
RANDALL T. ENG
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-11170

DECISION & ORDER

Dennis Panico, appellant, v Jiffy Lube International, Inc.,
defendant, Real Estate Oil Change Limited Partnership,
et al., respondents.

(Index No. 1855/08)

Bragoli & Associates, P.C., Melville, N.Y. (Christopher Bragoli, Susan R. Nudelman, and Daniel A. Fried of counsel), for appellant.

Martyn, Toher & Martyn, Mineola, N.Y. (Thomas M. Martyn of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Cozzens, Jr., J.), entered October 13, 2010, which granted the motion of the defendants Real Estate Oil Change Limited Partnership, and Real Estate Oil Change, LLC, for leave to reargue their motion for summary judgment dismissing the complaint insofar as asserted against them, which had been denied in an order of the same court entered April 16, 2010, and upon reargument, vacated so much of the determination in the order entered April 16, 2010, as denied the motion for summary judgment, and thereupon granted the motion for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order entered October 13, 2010, is affirmed insofar as appealed from, with costs.

The defendants Real Estate Oil Change Limited Partnership, and Real Estate Oil

July 12, 2011

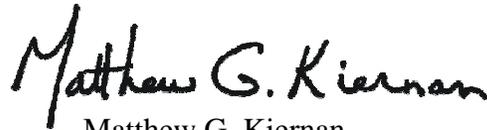
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Change, LLC (hereinafter together the defendants), established their prima facie entitlement to judgment as a matter of law by establishing that they were out-of-possession landlords who did not retain control over the premises and were not contractually obligated to maintain or repair the premises (see *McElroy v Bernstein*, 72 AD3d 757, 758; *Kane v Port Auth. of N.Y. & N.J.*, 49 AD3d 503, 503-504; *Shrenkel v New York State Dormitory Auth.*, 266 AD2d 369). The defendants further established, prima facie, that they did not create the allegedly dangerous conditions that caused the plaintiff's injuries, nor lease the premises knowing that dangerous conditions existed on the premises (see *McElroy v Bernstein*, 72 AD3d at 758; *Lomedico v Cassillo*, 56 AD3d 1271, 1271). In opposition, the plaintiff failed to raise a triable issue of fact (see generally *Zuckerman v City of New York*, 49 NY2d 557, 562).

Accordingly, upon reargument, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint insofar as asserted against them.

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

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court