

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

D32025
H/kmb

_____AD3d_____

Argued - June 20, 2011

MARK C. DILLON, J.P.
RANDALL T. ENG
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-12129

DECISION & ORDER

Gina Delgardio, et al., plaintiffs-respondents,
v Jose Davis, et al., defendants-respondents,
Island Condo Management Corp., appellant.

(Index No. 100189/09)

Vincent D. McNamara, East Norwich, N.Y. (Michael S. Seltzer and Anthony Marino of counsel), for appellant.

Desimone, Aviles, Shorter & Oxamendi, LLP, New York, N.Y. (Benjamin A. Shatzky of counsel), for plaintiffs-respondents.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for defendant-respondent Rose A. Ciccone.

In an action to recover damages for injury to property, the defendant Island Condo Management Corp. appeals, as limited by its brief, from so much of an order of the Supreme Court, Richmond County (McMahon, J.), dated September 22, 2010, as denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with one bill of costs payable by the respondents appearing separately and filing separate briefs and the respondents Jose Davis and Betty Davis, and the motion of the defendant Island Condo Management Corp. for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is granted.

The plaintiffs rented a first floor condominium unit from its individual owner. The unit

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above the plaintiffs' apartment was owned by the defendants Jose Davis and Betty Davis (hereinafter together the Davis defendants), who had a washer and dryer in their unit, which they owned and maintained. The Davis defendants' washing machine hose broke, allegedly causing a flood in the plaintiffs' apartment. As a result, the plaintiffs commenced this action against, among others, the defendant Island Condo Management Corp. (hereinafter Island Condo), which managed the condominium complex.

Liability for a dangerous condition on real property must be predicated upon ownership, occupancy, control, or special use of the property (*see Wail v City of New York*, 71 AD3d 1134; *Kydd v Daarta Realty Corp.*, 60 AD3d 997; *Livichusca v M & T Mtge. Co.*, 49 AD3d 822). The defendant Island Condo established its entitlement to judgment as a matter of law by demonstrating, prima facie, that it did not own, use, control, or make special use of the Davis defendants' unit and that it had no duty to maintain the Davis defendants' washing machine, including its hose (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). In opposition, no triable issue of fact was raised (*id.*). Accordingly, the Supreme Court should have granted Island Condo's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

DILLON, J.P., ENG, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court