

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

D32927  
N/ct

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

Argued - October 17, 2011

PETER B. SKELOS, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

2010-12102

DECISION & ORDER

Mayaline Noel, et al., respondents, v Starrett City, Inc.,  
appellant.

(Index No. 19917/08)

Brody, Benard & Branch, LLP, New York, N.Y. (Mary Ellen O'Brien of counsel),  
for appellant.

Stefano A. Filippazzo, P.C., Brooklyn, N.Y. (Louis A. Badolato of counsel), for  
respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from  
an order of the Supreme Court, Kings County (Bunyan, J.), dated October 7, 2010, which denied its  
motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's  
motion for summary judgment dismissing the complaint is granted.

The plaintiff Mayaline Noel (hereinafter the injured plaintiff) fell from an interior  
staircase of a building owned by the defendant. Thereafter, the injured plaintiff and her husband,  
suing derivatively, commenced this action to recover damages for personal injuries allegedly  
sustained as a result of the fall. By order dated October 7, 2010, the Supreme Court denied the  
defendant's motion for summary judgment dismissing the complaint. We reverse.

The defendant established its prima facie entitlement to summary judgment  
dismissing the complaint by demonstrating that the injured plaintiff was unable to identify the cause

November 15, 2011

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of her fall (*see Scott v Rochdale Vil., Inc.*, 65 AD3d 621; *Kletke v GOS Corp.*, 51 AD3d 875; *Birman v Birman*, 8 AD3d 219). In opposition, the plaintiffs failed to raise a triable issue of fact.

Although the plaintiffs submitted an affidavit from an engineer who claimed that the staircase violated certain provisions of the Multiple Dwelling Law and the Administrative Code of the City of New York, the plaintiffs presented no evidence connecting these alleged violations to the injured plaintiff's fall. Therefore, "it would be speculative to assume that these alleged violations were a proximate cause of the accident" (*Reiff v Beechwood Browns Rd. Bldg. Corp.*, 54 AD3d 1015, 1015; *see Guterrez v Iannacci*, 43 AD3d 868; *Birman v Birman*, 8 AD3d at 220; *Grob v Kings Realty Assoc.*, 4 AD3d 394, 395). Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

SKELOS, J.P., HALL, LOTT and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court