

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

D34094  
Y/prt

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Submitted - February 2, 2012

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
ROBERT J. MILLER, JJ.

2011-05208

DECISION & ORDER

Edward Chapman, respondent, v  
MCS Realty, LLC, appellant.

(Index No. 8023/09)

Tromello, McDonnell & Kehoe, Melville, N.Y. (Kevin P. Slattery of counsel), for appellant.

Baxter, Smith & Shapiro, P.C. (Joseph M. Guzzardo and Steven Bundschuh 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 (Whelan, J.), dated February 17, 2011, 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 allegedly was injured when he fell on an icy sidewalk at night after exiting a building owned by the defendant and leased to the plaintiff's employer, a retail furniture store. The plaintiff commenced this action against the defendant, alleging that it was negligent in failing to remove snow and ice from the sidewalk and in failing to provide adequate exterior lighting. The defendant moved for summary judgment dismissing the complaint. The Supreme Court denied the motion. The defendant appeals, and we reverse.

"An out-of-possession landlord's duty to repair a dangerous condition on leased

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premises is imposed by statute or regulation, by contract, or by a course of conduct” (*Mercer v Hellas Glass Works Corp.*, 87 AD3d 987, 988; *see Rivera v Nelson Realty, LLC*, 7 NY3d 530, 534; *Chapman v Silber*, 97 NY2d 9, 19-20; *Juarez v Wavecrest Mgt. Team*, 88 NY2d 628, 642; *Alnashmi v Certified Analytical Group, Inc.*, 89 AD3d 10). Here, the plaintiff does not premise liability on a violation of a statute or regulation and, instead, bases his claim on the common law. The defendant made a prima facie showing of its entitlement to judgment as a matter of law by demonstrating that it was an out-of-possession landlord, that the lease placed responsibility for maintenance of the sidewalk and exterior lighting on the tenant, and that it did not endeavor to perform such maintenance (*see Alnashmi v Certified Analytical Group, Inc.*, 89 AD3d at 18-19; *Mercer v Hellas Glass Works Corp.*, 87 AD3d at 987-988; *Panico v Jiffy Lube Intl., Inc.*, 86 AD3d 553; *McElroy v Bernstein*, 72 AD3d 757, 758; *Euvino v Loconti*, 67 AD3d 629, 631). In opposition, the plaintiff failed to raise a triable issue of fact (*see generally Zuckerman v City of New York*, 49 NY2d 557). Accordingly, the Supreme Court should have granted the defendant’s motion for summary judgment dismissing the complaint.

SKELOS, J.P., DICKERSON, BELEN and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court