

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

D34378
Y/kmb

_____AD3d_____

Argued - March 2, 2012

ANITA R. FLORIO, J.P.
PLUMMER E. LOTT
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-02613

DECISION & ORDER

Nancy Hadgraft, et al., appellants, v Paul Morin,
et al., respondents.

(Index No. 22976/08)

Carl Maltese, Smithtown, N.Y. (Stanford Kaplan of counsel), for appellants.

Farber Brocks & Zane, LLP, Mineola, N.Y. (Braden H. Farber and Tracy L. Frankel
of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Martin, J.), dated January 13, 2011, which granted the defendants' motion for summary judgment dismissing the complaint.

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

Contrary to the Supreme Court's determination, the plaintiff Nancy Hadgraft (hereinafter the injured plaintiff) was able to identify the cause of her fall on the night of the subject accident as her inability to see the small single-step riser on the walkway she was traversing on the defendants' premises.

Furthermore, the defendants failed to meet their initial burden of establishing their prima facie entitlement to judgment as a matter of law, as a triable issue of fact existed as to whether the area near the single-step riser was sufficiently lit on the night of the accident and whether the single-step riser was open and obvious and not inherently dangerous (*see Kempter v Horton*, 33 AD3d 868).

April 3, 2012

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Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

FLORIO, J.P., LOTT, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court