

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

D34902
H/ct

_____AD3d_____

Submitted - April 12, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2011-04641

DECISION & ORDER

Gary Murphy, appellant, v New York City Housing
Authority, respondent.

(Index No. 26917/08)

Levine & Vaysberg, P.C., Mineola, N.Y. (Alexander Levine of counsel), for
appellant.

Herzfeld & Rubin, P.C., New York, N.Y. (Neil R. Finkston and Miriam Skolnik of
counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Kings County (Jacobson, J.), entered April 8, 2011, which granted the
defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff alleged that he was injured when he slipped on pebbles thrown from the
roof of a building owned by the defendant. The plaintiff commenced this action to recover damages
for personal injuries against the defendant. The Supreme Court granted the defendant's motion for
summary judgment dismissing the complaint.

The defendant established its prima facie entitlement to judgment as a matter of law
by demonstrating that the alleged criminal act which caused the plaintiff's injury was not foreseeable
as a matter of law (*see Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519; *Burgess v City of New
York*, 205 AD2d 656, 657; *O'Britis v Peninsula Golf Course*, 143 AD2d 123, 125; *Steenbar v
Buerman & Co.*, 2 AD2d 780, *affd* 2 NY2d 903; *cf. Johnson v New York City Hous. Auth.*, 114

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AD2d 438).

In opposition, the plaintiff failed to submit evidence sufficient to raise a triable issue of fact. In his opposition papers, the plaintiff contended for the first time that the defendant should have removed the pebbles from the roof of the building or installed video cameras to protect him from the criminal conduct of a third person. Since these theories were not articulated in the notice of claim, pleaded in the complaint, or set forth in the bill of particulars, the Supreme Court properly declined to consider them (*see Yaeger v UCC Constructors*, 281 AD2d 990, 991).

In light of our determination, we need not reach the appellant's remaining contentions.

Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., CHAMBERS, ROMAN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court