

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

D34961
C/mv

_____AD3d_____

Argued - March 30, 2012

PETER B. SKELOS, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2011-08406

DECISION & ORDER

Tim O'Leary, respondent, v Do-Mor Realty, LLC,
appellant.

(Index No. 12092/08)

Havkins Rosenfeld Ritzert & Varriale, LLP, New York, N.Y. (Tracy P. Hoskinson and Tara C. Fappiano of counsel), for appellant.

Frekhtman & Associates, P.C., Brooklyn, N.Y. (Andrew Green of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Martin, J.), dated June 29, 2011, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On its motion for summary judgment, the defendant established its prima facie entitlement to judgment as a matter of law by demonstrating that it neither created the conditions that allegedly caused the plaintiff to fall, nor had actual or constructive notice of such conditions prior to the occurrence in question (*see Kokin v Key Food Supermarket, Inc.*, 90 AD3d 850; *Tavares v City of New York*, 88 AD3d 689). The Supreme Court properly concluded that, in opposition, the plaintiff raised triable issues of fact as to the defendant's creation and constructive notice of the conditions that allegedly caused the plaintiff's fall. Thus, the Supreme Court properly denied the defendant's motion.

SKELOS, J.P., FLORIO, BELEN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

May 15, 2012

O'LEARY v DO-MOR REALTY, LLC