

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

D36322  
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Argued - September 21, 2012

ANITA R. FLORIO, J.P.  
THOMAS A. DICKERSON  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

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2011-09606

DECISION & ORDER

Gustav Lee, et al., appellants, v Second Avenue  
Village Partners, LLC, et al., respondents  
(and a third-party action).

(Index No. 27198/08)

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Finkelstein & Partners, LLP, Newburgh, N.Y. (George A. Kohl II of counsel), for  
appellants.

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Marcia  
K. Raicus of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from  
an order of the Supreme Court, Kings County (Schmidt, J.), dated July 27, 2011, which granted that  
branch of the defendants' motion which was for summary judgment dismissing the amended  
complaint.

ORDERED that the order is reversed, on the law, with costs to the plaintiffs, and that  
branch of the defendants' motion which was for summary judgment dismissing the amended  
complaint is denied.

On September 19, 2007, the injured plaintiff, an employee of the third-party  
defendant, Starbucks Corporation, allegedly sustained personal injuries when the bottom step of a  
staircase leading from the street to the basement of the premises located at 145 Second Avenue in  
Manhattan broke from its weld, causing him to fall. Subsequently, the injured plaintiff, and his wife  
suing derivatively, commenced this action against the owners of the premises, Second Avenue  
Village Partners, LLC, and Jonis Realty Management Corp., as well as their managing agent, Citi-

November 7, 2012

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Urban Management Corp., alleging, among other things, that they were negligent in allowing, causing, and/or permitting hazardous and unsafe conditions to exist on the staircase. After discovery, the defendants moved, inter alia, for summary judgment dismissing the amended complaint, asserting that, as out-of-possession landlords and their managing agent, they were not responsible for the condition that allegedly caused the accident. The Supreme Court granted that branch of the motion.

“An out-of-possession landlord's duty to repair a dangerous condition on leased premises is imposed by statute or regulation, by contract, or by a course of conduct” (*Goggins v Nidoj Realty Corp.*, 93 AD3d 757, 758, quoting *Mercer v Hellas Glass Works Corp.*, 87 AD3d 987, 988; see *Rivera v Nelson Realty, LLC*, 7 NY3d 530, 534; *Vialva v 40 West 25th St. Assoc., L.P.*, 96 AD3d 735, 736; *Chapman v MCS Realty, LLC*, 92 AD3d 913, 913; *Alnashmi v Certified Analytical Group, Inc.*, 89 AD3d 10, 14). Here, contrary to the defendants’ contention, they failed to establish, prima facie, that they were not contractually obligated to maintain the subject staircase or repair the defect therein that allegedly caused the injured plaintiff’s accident (see *Lalicata v 39-15 Skillman Realty Co., LLC*, 63 AD3d 889). Since the defendants failed to meet their burden on the motion, the Supreme Court should have denied that branch of the motion which was for summary judgment dismissing the amended complaint, regardless of the sufficiency of the plaintiffs’ opposition papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

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

ENTER:

  
Aprilanne Agostino  
Clerk of the Court