

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

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_____AD3d_____

Argued - December 4, 2012

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2011-09788

DECISION & ORDER

Christine Palmer, appellant, v Prima Properties, Inc.,
respondent.

(Index No. 21932/10)

Lynn Law Firm, LLP, Syracuse, N.Y. (Patricia A. Lynn-Ford of counsel), for
appellant.

Havkins Rosenfeld Ritzert & Varriale, LLP, White Plains, N.Y. (Tara C. Fappiano
of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Westchester County (Walker, J.), entered October 4, 2011, which
granted the defendant's 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 denied.

The defendant failed to establish its prima facie entitlement to judgment as a matter
of law, as it did not demonstrate that the stairs in question need not have been equipped with a
handrail (*see Wajdzik v YMCA of Greater N.Y.*, 65 AD3d 586). Moreover, if a handrail was required,
a triable issue of fact was raised by the plaintiff's deposition testimony, which was submitted by the
defendant in support of its motion, as to whether the lack of a handrail was a proximate cause of the
plaintiff's injuries (*see Boudreau-Grillo v Ramirez*, 74 AD3d 1265; *Antonia v Srouf*, 69 AD3d 666;
Wajdzik v YMCA of Greater N.Y., 65 AD3d 586; *Asaro v Montalvo*, 26 AD3d 306).

Accordingly, the Supreme Court erred in granting the defendant's motion for

summary judgment dismissing the complaint. Since the defendant failed to meet its prima facie burden in the first instance, the Supreme Court should have denied the defendant's motion regardless of the sufficiency of the plaintiff's opposition papers (*see Boudreau-Grillo v Ramirez*, 74 AD3d at 1267-1268; *Wajdzik v YMCA of Greater N.Y.*, 65 AD3d at 587).

SKELOS, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court