

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 22-00315

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, MONTOUR, AND OGDEN, JJ.

FORRESTAL GRAY, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

SUMMIT ASSETS, LLC, DEFENDANT-APPELLANT.

PENINO & MOYNIHAN, LLP, WHITE PLAINS (MELISSA L. VINCTON OF COUNSEL),
FOR DEFENDANT-APPELLANT.

LAW OFFICES OF ROBERT D. BERKUN, BUFFALO (PHILIP A. MILCH OF COUNSEL),
FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Paul Wojtaszek, J.), entered February 7, 2022. The order denied defendant's motion for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries that he sustained when he slipped and fell while stepping off the stairs and onto a concrete pad on property owned by defendant. Defendant appeals from an order denying its motion for summary judgment dismissing the complaint. We affirm. Defendant failed to meet its initial burden on the motion of establishing as a matter of law that it did not create or have actual or constructive notice of the defective condition (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Salim v Western Regional Off-Track Betting Corp., Batavia Downs*, 100 AD3d 1370, 1372 [4th Dept 2012]).

Entered: March 17, 2023

Ann Dillon Flynn
Clerk of the Court