

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS V. POLIZZI IA Part 14  
Justice

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ANTHONY ARCHER, x

Index  
Number 7690

2002 Plaintiff,

Motion  
Date September 7,

-against-

2004

WALL STREET BATH and HEALTH CLUB,  
INC., 33 BRE, INC., TPL/GOLD  
STREET PROPERTIES and THURCON  
PROPERTIES LTD.,

Motion  
Cal. Number 3

Defendants.

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x

The following papers numbered 1 to 10 read on this motion by defendants TPL/Gold Street Properties (TPL/Gold) and Thurcon Properties, Ltd. (Thurcon) for summary judgment dismissing the complaint as asserted against them.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-4
Answering Affidavits - Exhibits.....	5-7
Reply Affidavits - Exhibits.....	8-10

Upon the foregoing papers it is ordered that the motion is granted.

Plaintiff alleges that after collapsing from a seizure while in a dry heat room or sauna at a facility operated by defendant Wall Street Bath and Health Club, Inc. (Wall Street Bath), he

sustained second and third degree burns requiring skin grafts on his arm and shoulder from a few seconds of contact with the tile floor. The bath club facility is located in a building in Manhattan known as 88 Fulton Street a/k/a 33 Gold Street which is owned by defendant TPL/Gold and managed for TPL/Gold by defendant Thurcon.

TPL/Gold is an out-of-possession owner which did not retain control of the subject premises and is not contractually obligated to maintain or repair it. (See, Gibson v Bally Total Fitness Corp., 1 AD3d 477 [2003]; Ahmad v City of New York, 298 AD2d 473 [2002].) Although TPL/Gold retained a right of re-entry to inspect and make repairs, such reservation of right is not sufficient to permit the imposition of liability absent the existence of a specific statutory violation and a significant structural or design defect that proximately caused plaintiff's injuries. (See, Belotserkovskaya v Café "Natalie", 300 AD2d 521 [2002]; Jackson v United States Tennis Assn., 294 AD2d 470 [2002]; Hernandez v Seven Fried Food, 292 AD2d 343 [2002].) On the record presented herein, there is no evidence of the violation of a specific statutory provision and there is no basis to conclude that the allegedly dangerous condition of the floor in the dry heat room was due to a significant structural or design defect. (See, Caiazzo v Angelone, 236 AD2d 351 [1997]; Chrisostomides v Berjas Realty Co., 231 AD2d 601 [1996].) The unsubstantiated, vague speculations of plaintiff's attorney regarding the maintenance and repair of water pipes are insufficient to raise a triable issue of fact. (See, Partridge v Pinzino, 227 AD2d 460 [1996].) Moreover, the rider to the lease agreement between TPL/Gold and Wall Street Bath specifically imposes on Wall Street Bath the responsibility to supply hot water for the demised premises with its own hot water heater and to maintain the fixtures, pipes, valves, and other plumbing connections which service the facility. The outstanding disclosure referenced by plaintiff is addressed not to movants but to Wall Street Bath.

Under the circumstances, TPL/Gold and its managing agent, Thurcon, are entitled to summary judgment dismissing the complaint. (CPLR 3212[b].)

Dated: November 10, 2004

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J.S.C.