

<b>Madera v 162 Assoc, LLC</b>
2007 NY Slip Op 30004(U)
March 1, 2007
Supreme Court, New York County
Docket Number: 0103029
Judge: Marcy S. Friedman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **MARCY S. FRIEDMAN**

PART 57

Index Number : 103029/2005

MADERA, CARMEN

vs  
162 ASSOCIATES

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. 103029/05

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion ~~is~~ for summary judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
<u>1</u>
<u>2</u>
<u>3</u>

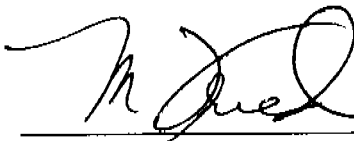
Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER.**

**FILED**  
MAR 09 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3-1-07

  
\_\_\_\_\_  
**Hon. Marcy S. Friedman**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

\_\_\_\_\_ x  
CARMEN MADERA,

*Plaintiff(s),*

- against -

162 ASSOCIATES, LLC and MURRAY HILL  
PROPERTY,

*Defendant(s).*  
\_\_\_\_\_ x

Index No.: 103029/05

DECISION/ORDER

**FILED**  
MAR 09 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

In this personal injury action, plaintiff sues for injuries she sustained when she slipped and fell down stairs at the premises of her employer, the Bank of New York, on December 3, 2003. The owners of the premises, defendants 162 Associates, LLC and Murray Hill Property (hereinafter “owners”) move for summary judgment dismissing plaintiff’s complaint. Bank of New York moves to dismiss owners’ third-party complaint against it for common law and contractual indemnification, and failure to procure insurance.

Plaintiff alleges that while carrying a canister from the first floor to the basement, she fell down a set of stairs used only by Bank of New York’s employees, not by the general public. Plaintiff attributes her accident to defective stair treads and a handrail that did not extend all the way down the stairs.

Owners make a prima facie showing that they were not responsible to maintain or repair the alleged defects that caused plaintiff’s accident. While it is undisputed that pursuant to their lease with the Bank of New York, defendants were responsible for structural repairs, the alleged defects to the stair treads are not structural in nature. (See Regensdorfer v Central Buffalo Project Corp., 247 AD2d 931 [4<sup>th</sup> Dept 1998]. See also Quinones v 27 3<sup>rd</sup> City Rest., Inc., 198

AD2d 23 [1<sup>st</sup> Dept 1993].) Moreover, New York City Administrative Code § 27-375, specifying requirements for handrails, is inapplicable to the subject stairwell, as the stairs lead from the first floor to the basement and do not provide an exit from the premises. (See Maksuti v Best Italian Pizza, 27 AD3d 300 [1<sup>st</sup> Dept 2006].) Absent any showing of a violation of a specific statutory provision by defendants, plaintiff fails to raise a triable issue of fact as to their liability. (See Regensdorfer, 247 AD2d at 932.) Plaintiff's complaint must accordingly be dismissed.

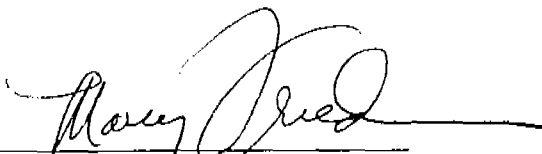
In light of the dismissal of plaintiff's complaint, owners' third-party complaint against Bank of New York is moot. Bank of New York's motion for summary judgment should therefore be granted. In any event, the motion is meritorious. There can be no bona fide dispute that the lease in effect as of the date of plaintiff's accident did not require Bank of New York to indemnify defendants for personal injury claims against them.

It is accordingly hereby ORDERED that the motion of defendants 162 Associates, LLC and Murray Hill Property, and the motion of Bank of New York are granted to the extent that it is ORDERED that plaintiff's complaint is dismissed, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the third-party complaint is dismissed, and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: New York, New York  
March 1, 2007

  
\_\_\_\_\_  
MARCY FRIEDMAN, J.S.C.

**FILED**  
MAR 09 2007  
NEW YORK  
COUNTY CLERK'S OFFICE