At an IAS Term, Part 41, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 13th day of February, 2008.

P R E S E N T:

HON. LARRY D. MARTIN,
Justice.

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RANDY DEANS,

Index No. 36437/05

Plaintiff,

- against -

U.S. BROWNSVILLE II HOUSING DEVELOPMENT FUND CORPORATION, et ano.,
Defendants.

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The following papers number 1 to 7 read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-2, 4-5
Opposing Affidavits (Affirmations)	3, 6
Reply Affidavits (Affirmations)	7
_____ Affidavit (Affirmation)	
Other Papers	

Upon the foregoing papers, defendants U.S. Brownsville II Housing Development Fund Corporation and Urban Strategies, Inc. (collectively, USI) move for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint herein and plaintiff Randy Deans (Deans) cross-moves for an order, pursuant to CPLR 3212, granting summary judgment in his favor with respect to the issue of liability.

This is a negligence action in which plaintiff seeks money damages for personal injuries he allegedly sustained on August 6, 2007 when he fell in a stairway at 607 Jerome Street in Brooklyn, a building owned and managed by USI. On the date of the accident, Deans was about to exit the subject premises after visiting his girlfriend, Vanessa Roman, who resides in apartment 2A of the building. While walking down the stairs, plaintiff slipped and fell, injuring his ankle. At his examination before trial, Deans testified that, after falling, he noticed trash on the steps and, as he fell, he heard a noise which "sounded like a greasy popcorn box or candy wrapper with liquid inside."

In his motion, Deans cites his own affidavit and that of his girlfriend in which they aver that there was a "constant problem" with debris on the stairs of the building. Ms. Roman alleges that she made numerous complaints regarding debris to the building superintendent, Camel "Sam" Stapleton, as well as to a USI employee, Pelham Bollers, but to no avail. Deans also submits the "form" affidavit[1] of another tenant, Elizabeth Jimenez, in which she alleges, in words identical to those used by plaintiff and Ms. Roman, that the stairway often contained debris.

In opposition to the motion, USI offers the deposition testimony of the superintendent, Camel "Sam" Stapelton. Mr. Stapleton testified that he has been the superintendent of the

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[1] In the affidavit, Ms. Jimenez's name and apartment number, as well as the length of time which she has resided at the address, were handwritten on blank lines provided for this purpose. Ms. Jimenez deleted certain typewritten portions of the form. These include: (1) "30" units was stricken and "16" was written in, (2) the phrase "...there have been numerous accidents in the building resulting from individual tripping, slipping, and/ or falling due to debris." was deleted, and (3) "I have complained to 'Sam' the superintendent about the debris on numerous occasions throughout my tenancy as have other tenants." was likewise deleted in its entirety.

premises for the last 14 years, that he swept the common areas of the building three to four times per week and that he mopped those areas twice each week. He added that, to his knowledge, no one has ever complained of debris in the hallways and he has never received notice of such complaints from his supervisor, Granville Spence, or USI.

It is well settled that a landowner is under a duty to maintain its property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury and the burden of avoiding the risk (*see Basso v Miller*, 40 NY2d 233, 241 [1976]). As a prerequisite for recovery, a plaintiff must establish that the landlord created or had actual or constructive notice of the hazardous condition that precipitated the injury (*see O'Connor-Miele v Barhite & Holzinger*, 234 AD2d 106 [1996]). A plaintiff may raise a triable issue of fact regarding constructive notice by adducing sufficient evidence that an ongoing and recurring dangerous condition existed in the area of the accident that was routinely left unaddressed by the landlord (*see Irizarry v 154 Mosholu Four, LLC*, 24 AD3d 373 [2005]). Where an owner exercises sufficient control over the property in question, constructive notice can be demonstrated by the existence of a dangerous condition on the property where such condition constitutes a significant structural defect and violates a specific statutory provision (*see Dominguez v Food City Markets, Inc.*, 303 AD2d 618, 619 [2003]). "On a motion for summary judgment to dismiss the complaint based on lack of notice, the defendant is required to make a prima facie showing affirmatively establishing the absence of notice as a matter of law" (*see Fox v Kamal Corp.*, 271 AD2d 485, 485 [2000]).

In their deposition testimony, Deans and Ms. Roman allege that debris on the subject stairwell was a recurring condition. At his deposition,Camel "Sam" Stapelton claimed that he and USI took reasonable steps to maintain the subject stairwell and that defendants had no knowledge, actual or constructive, of the alleged defective condition. Such contradictory testimony raises issues of fact as to whether there was a dangerous and unremedied recurring condition on the stairs that caused plaintiff's claimed injury (*see Bido v 876-882 Realty, LLC*, 41 AD3d 311 [2007]; *Talavera v New York City Tr. Auth.*, 41 AD3d 135 [2007]; *Brown v Linden Plaza Housing Co., Inc., 36* AD3d *742 2007]; Uhlich v Canada Dry Bottling Co. of New York*, 305 AD2d 107 [2003]; *Garcia v U-Haul Co., Inc.*, 303 AD2d 453 [2003]). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . on a motion for summary judgment" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004], *quoting Anderson v Liberty Lobby, Inc.*, 477 US 242, 255 [1986]; *see also Scott v Long Is. Power Auth.*, 294 AD2d 348, 348 [2002]). Consequently, summary judgment is unwarranted with respect to the issue of constructive notice based upon an allegedly recurring dangerous condition.

To establish a violation of a statutory provision and thereby impute constructive notice to USI, Deans offers the affidavit of an architect, Thomas R. Turkel, who inspected the building on July 26, 2006. Mr. Turkel's affidavit cites two alleged violations of the New York Building Code; namely, the absence of a second handrail on the subject stairs and an alleged structural defect of the "leading edge of the second floor landing pitches up 7/8' [*sic*]

in 8-1/2" from the surface of the second floor hall at the top edge of the upper stair run going down to the first floor."

The court is unable to conclude that the alleged defect is "de minimus," as USI argues , and, therefore, not inherently dangerous as a matter of law (*see Burke v Grace Evangelical Lutheran Church, Bellmore, L.I.,* 6 Misc 3d 1005 [2004]). Conversely, plaintiff offers no evidence, other than conclusory statements, showing how the alleged defect constitutes a "significant structural defect" that violates a specific statutory provision (*see Dominguez v Food City Markets, Inc.*, 303 AD2d 618, 619 [2003]).

With respect to the alleged missing handrail, Mr. Turkel notes, in his affidavit, that "[t]he stairs are 40" wide" and "607 Jerome Street, Brooklyn, New York was built in 1928." He also asserts that "[t]he New York State Building code requires stairs wider than 3' 0" to have a handrail on both sides. Section 765.4 (a) (11)" and that "[t]he subject stairs are 40" wide." The New York State Building Code (9 NYCRR 765.4 [a] [11]) provides, in relevant part, "stairs ***less than 44 inches in width*** shall be provided with a handrail on at least one side, and ***if 44 inches or more in width***, on both sides" (*emphasis added*). Since the Building Code was enacted in 1984 (*9 NYCRR 651.2*) and preexisting structures are not required to comply with the above requirement unless the building undergoes a renovation which during any six-month period has a cost exceeding 50% of the building's replacement cost[2], Section 765.4 [a][11] is inapplicable (*see 9 NYCRR 1231.3 [c]*; *Cole v Emunah Gen. Contr.*, 227

[2]There is nothing in the plaintiff's moving papers to indicate that any such work was done.

AD2d 877, 878 [1996]; *Wilson v Proctors Theater & Arts Ctr. Theater,* 223 AD2d 826, 827 [1996]).

Mr. Turkel also noted that "[t]he 'State of New York Multiple Residence Law' requires a handrail on each side of a stair-Section 132." Article 5 §100 of the Multiple Residence Law (MRL) states, in pertinent part,: "All the provisions of this article shall apply to every multiple dwelling of permanent or transient occupancy ***erected on or after July first, nineteen hundred fifty-two*** (*emphasis added*). Moreover, MRL Article 5, Title 2, §132 provides, in relevant part, : "Every such stair and fire-stair ***three feet eight inches or more in width*** shall be provided with a handrail on each side." (*emphasis added*) Since the premises was erected in 1928 and the stairs measure 40 inches across, the MRL is likewise inapplicable.

Lastly, Mr. Turkel cites "[t]he Code of Ordinances of the City of New York" (The N.Y.C. Building Code) approved in July 1916 as amended in 1928. Article 8, Exit Facilities, Section 153 Interior Stairs, Sub Paragraph 6 - Handrails, requires handrails on both sides of a stair." Although this ordinance is, in fact, applicable to the building, the architect has omitted Sub-paragraph 3 thereof which provides, in pertinent part, that: "[n]o stair or stairway required by this article as an exit shall have an unobstructed ***width of less than 44 inches*** throughout its length, except that hand-rails may project not more than 3 ½ inches into such width." (*emphasis added*). As Mr. Turkel points out, the subject stairs are 40 inches wide, regardless of the space taken by the single handrail. The later codifications of this ordinance - - - the State Building Code and MRL, *supra* - - - are consistent with the prior

1928 ordinance insofar as stairs measuring 44 inches or more in width must have handrails on both sides in order to be within the code requirements. The certificate of occupancy issued by the Bureau of Buildings on May 10, 1929 certified that the premises "has been completed substantially according to the approved plans and specifications and the requirements of the Building Code, and permission is hereby granted for the occupancy of said building for the following purposes . . ." Absent evidence to the contrary, the court finds that issuance of the Certificate of Occupancy constitutes evidence that the building was within the code provisions at the time of its construction and, as a result, plaintiff has failed to raise a triable issue of fact as to whether the failure to provide a second handrail violated either the City or State building codes (*see Hyman v Queens Cty. Bancorp, Inc.*, 307 AD2d 984, 986 [2003]; *Beecher v Northern Men's Sauna*, 272 AD2d 281 [2000].) Accordingly, there was no violation of a statutory provision so as to impute constructive notice of a dangerous condition that constituted a significant structural defect (*see Dominguez,* 303 AD2d at 619). Therefore, the motion by USI and the cross motion by plaintiff are denied in their entirety.

The foregoing constitutes the decision and order of this court.

E N T E R,

J. S. C.

HON. LARRY D. MARTIN
Justice of the Supreme Court