

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

D24049  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 3, 2009

A. GAIL PRUDENTI, P.J.  
HOWARD MILLER  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2008-09308

DECISION & ORDER

Krystyna Wajdzik, respondent, v YMCA  
of Greater New York, appellant.

(Index No. 30309/06)

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Gordon & Silber, P.C., New York, N.Y. (Shadrach A. Stanleigh of counsel), for  
appellant.

Michael A. Forzano, Brooklyn, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an  
order of the Supreme Court, Queens County (F. Rivera, J.), entered September 18, 2008, which  
denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained personal injuries when she fell down some stairs while  
exiting the defendant's building. The plaintiff subsequently commenced this action. The defendant  
then unsuccessfully moved for summary judgment.

The defendant bore the burden of establishing its prima facie entitlement to judgment  
as a matter of law (*see Zuckerman v City of New York*, 49 NY2d 557, 562). The Supreme Court  
properly concluded that the defendant failed to meet that burden, as, inter alia, it did not demonstrate  
that the stairs in question need not have been equipped with handrails. Moreover, if handrails were  
required, there is a triable issue of fact as to whether the lack of handrails was the proximate cause  
of the plaintiff's fall (*see Asaro v Montalvo*, 26 AD3d 306).

August 11, 2009

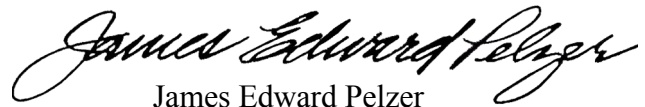
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Since the defendant did not meet its prima facie burden, it is unnecessary to consider the adequacy of the opposing papers (*see Keese v Imperial Gardens Assoc., LLC*, 36 AD3d 666). Accordingly, the defendant's motion for summary judgment dismissing the complaint was properly denied.

PRUDENTI, P.J., MILLER, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court