

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

1697

CA 09-01400

PRESENT: SMITH, J.P., FAHEY, CARNI, AND GREEN, JJ.

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DAREYA NATHAN, AN INFANT, BY HER PARENTS  
AND NATURAL GUARDIANS, DARYL NATHAN AND  
AKEYA DAVIS, AND DARYL NATHAN AND AKEYA  
DAVIS, PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

ROCHESTER HOUSING AUTHORITY,  
DEFENDANT-RESPONDENT.

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EDWIN ROBERT SCHULMAN, ROCHESTER, FOR PLAINTIFFS-APPELLANTS.

ERNEST D. SANTORO, ESQ., P.C., ROCHESTER (ERNEST D. SANTORO OF  
COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (Harold L. Galloway, J.), entered February 6, 2009 in a personal injury action. The order denied the motion of plaintiffs for partial summary judgment.

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

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by plaintiff daughter when she fell through the balusters of a railing in a building owned by defendant. Contrary to the contention of plaintiffs, Supreme Court properly denied their motion for partial summary judgment on the issue of liability. "Plaintiff[s'] expert[s] cited no authority, treatise, standard, building code, article or other corroborating evidence to support [their] assertion that good and accepted engineering and building safety practices called for the installation" of balusters with narrower gaps than those in the building in question (*Buchholz v Trump 767 Fifth Ave., LLC*, 5 NY3d 1, 8-9). "The opinion of a qualified expert that a plaintiff's injuries were caused by a deviation from relevant industry standards has no probative force where the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation" (*Wong v Goldbaum*, 23 AD3d 277, 279; see *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544). Plaintiffs thus failed to meet their initial burden on the motion, and we need not consider the sufficiency of defendant's opposing papers (see generally *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*,

64 NY2d 851, 853).

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court