

Sweeny, J.P., Renwick, Manzanet-Daniels, Kapnick, JJ.

209 Edward Mermelstein,  
Plaintiff-Appellant,

Index 114029/09

-against-

The East Winds Company, also  
knows as East Winds Condominium,  
Defendant-Respondent.

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Law Offices of Paul C. Cavaliere, New York (Paul C. Cavaliere and  
David De Andrade of counsel), for appellant.

Wilson Elser Moskowitz Edelman & Dicker LLP, White Plains (Joseph  
A.H. McGovern of counsel), for respondent.

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Order, Supreme Court, New York County (Joan A. Madden, J.),  
entered December 12, 2014, which granted defendant's motion for  
summary judgment dismissing the complaint, unanimously affirmed,  
without costs.

Plaintiff allegedly slipped and fell on an external  
staircase outside of defendant's building, where he lived.  
Plaintiff testified that the staircase was slippery, but he did  
not know what caused him to fall. He also testified that he  
could not remember if it had rained that day, but it was misting  
in the evening, when he fell. After defendant moved for summary  
judgment, plaintiff claimed in his affidavit in opposition that  
the stairs were wet and slippery from rain earlier in the day,

and that he slipped and fell as he descended the stairs.

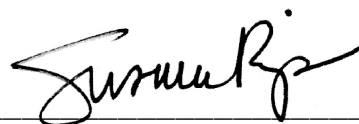
Defendant made a prima facie showing of its entitlement to summary judgment by pointing to plaintiff's deposition testimony that he did not know what caused him to fall (*Washington v New York City Bd. of Educ.*, 95 AD3d 739, 739-740 [1st Dept 2012]).

Plaintiff's affidavit, which contradicted his deposition testimony, created only a feigned issue of fact, and was insufficient to defeat defendant's motion (see *Telfeyan v City of New York*, 40 AD3d 372, 373 [1st Dept 2007]). Moreover, mere wetness on a walking surface due to rain is insufficient to raise a triable issue of fact, especially since plaintiff failed to submit any expert testimony showing that the staircase was dangerous when wet (see *Ceron v Yeshiva Univ.*, 126 AD3d 630, 632 [1st Dept 2015]).

We have considered plaintiff's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: FEBRUARY 11, 2016



CLERK