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PLAINTIFF BANKUVAZ vs DEFENDANT Plaximo et al

PLAINTIFFS OPPOSE THE MOTION IN ITS ENTIRETY  
 PLAINTIFFS ARGUE THAT THE COMPLAINT ALLEGES NEGLIGENCE  
 IN BOTH THE CONSTRUCTION, MAINTENANCE AND REPAIR OF THE  
 SUBJECT PREMISES. PLAINTIFFS FURTHER SUBMIT CASE LAW  
 TO SUPPORT THEIR CONTENTION THAT THEY MAY MAINTAIN  
 A CAUSE OF ACTION IN NEGLIGENCE SEPARATE FROM A CLAIM  
 FOR IMPLIED WARRANTY OF FITNESS AGAINST DEFENDANTS,  
 BUILDER AND ARCHITECTURE FIRM. (SEE; BOARD OF MANAGERS  
 OF ALFRED CONDOMINIUM V CAROL MANAGEMENT, INC, 214 AD 3RD,  
 1ST DEPT, 1995)

AFTER ORAL ARGUMENT, REVIEW OF THE PLEADINGS  
 HEREIN INCLUDING THE COMPLAINT, OFFERING PLAN, DEED AND  
 REPAIR INVOICES FOR "POURING WARRANTY WORK" (SEE DEFENDANTS'  
 NOTICE OF MOTION AND ANNEXED EXHIBITS) THE COURT DENIES  
 THE MOTION FOR SUMMARY JUDGMENT, FINDING A TRIABLE ISSUE  
 OF FACT AS TO LIABILITY IN NEGLIGENCE FOR CONSTRUCTION AND  
 REPAIR. (SEE CPLR 3212, ZUCKERMAN V CITY OF NEW YORK  
 49 NY 2D 557 (1987)). THE COURT GRANTS THE MOTION FOR  
 SUMMARY JUDGMENT AGAINST THE INDIVIDUAL PRINCIPALS,  
 LEU NAM YOTOU, EUGENE NAM YOTOU, TAMARA NAM YOTOU AND  
 ANN MARIE NAM YOTOU, FIND NO BASIS FOR LIABILITY ON THE  
 RECORD BEFORE IT.

ENTERED/SO ORDERED

  
 /HON. LARRY D. MARTIN  
 Justice of the Supreme Court
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