

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

D12907
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_____AD3d_____

Argued - October 23, 2006

GLORIA GOLDSTEIN, J.P.
REINALDO E. RIVERA
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2005-08774

DECISION & ORDER

Jahkysa Hamilton, et al., respondents, v
Jam Roc Cafe, Inc., appellant.

(Index No. 4924/03)

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Harry Steinberg and Steven B. Prystowsky of counsel), for appellant.

Michael S. Lamonsoff (DiJoseph & Portegello, P.C., New York, N.Y. [Arnold E. DiJoseph III and Norman I Lida] of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from so much of an order of the Supreme Court, Queens County (Rosengarten, J.), dated August 15, 2005, as denied that branch of its motion which was for summary judgment dismissing the causes of action based upon common-law negligence.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the circumstances of this case, the defendant failed to establish its prima facie entitlement to judgment as a matter of law (*see* CPLR 3212; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

GOLDSTEIN, J.P., RIVERA, SPOLZINO and SKELOS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 5, 2006

HAMILTON v JAM ROC CAFE, INC.