

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

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_____AD3d_____

Argued - October 24, 2006

HOWARD MILLER, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
ROBERT J. LUNN, JJ.

2005-05653

DECISION & ORDER

Eric Cruz, plaintiff-respondent, v Luciano P.
Martins, appellant, Jessica Grocery, et al.,
defendants-respondents.

(Index No. 31982/02)

Milber Makris Plousadis & Seiden, LLP, White Plains, N.Y. (James K. Baden of counsel), for appellant.

Greenberg & Stein, New York, N.Y. (Joshua Stein and Ian Asch of counsel), for plaintiff-respondent.

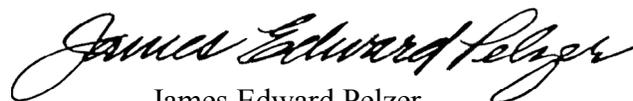
In an action to recover damages for personal injuries, the defendant Luciano P. Martins appeals from an order of the Supreme Court, Queens County (Kitzes, J.), dated May 5, 2005, which denied his motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him.

ORDERED that the order is affirmed, with costs to the plaintiff-respondent.

In support of his motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him, the defendant Luciano P. Martins failed to demonstrate a prima facie entitlement to judgment as a matter of law (*see Alonso v Branchinelli*, 277 AD2d 408). Thus, the motion was properly denied regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

MILLER, J.P., RITTER, SANTUCCI and LUNN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 12, 2006

CRUZ v MARTINS