

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

D13319
G/cb

_____AD3d_____

Argued - November 21, 2006

HOWARD MILLER, J.P.
STEPHEN G. CRANE
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2006-04984

DECISION & ORDER

Preston Hibbert, respondent, v Victor Avwontom, et al.,
appellants.

(Index No. 34607/05)

Picciano & Scahill, P.C., Westbury, N.Y. (Gilbert J. Hardy of counsel), for appellants.

Donald Friedman, P.C., Brooklyn, N.Y. (Mitchell Gorkin of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Johnson, J.), dated April 27, 2006, which denied their motion for summary judgment dismissing the complaint based on the doctrines of res judicata and collateral estoppel.

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is granted.

The defendants made a prima facie showing of entitlement to judgment as a matter of law demonstrating that the instant litigation is barred by the doctrine of collateral estoppel based on a previous arbitration award which was adverse to the plaintiff (*see Clemens v Apple*, 65 NY2d 746, 748-749; *Ryan v New York Tel. Co.*, 62 NY2d 494, 500, 500-501; *Goepel v City of New York*, 23 AD3d 344, 346; *Carter v Gospel Temple Church of God in Christ*, 19 AD3d 353, 354-355). In opposition, the plaintiff failed to raise a triable issue of fact (*see Martin v Geico Direct Ins.*, 31 AD3d 505, 506). Accordingly, the Supreme Court should have granted the defendants' motion for summary

judgment dismissing the complaint.

The plaintiff's remaining contention is without merit (*see Matter of New York Cent. Mut. Fire Ins. Co. v Reinhardt*, 27 AD3d 751, 753; *Hilowitz v Hilowitz*, 85 AD2d 621).

MILLER, J.P., CRANE, LIFSON and DILLON, JJ., concur.

ENTER:


James Edward Kelly
Clerk of the Court