

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

D14021
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_____AD3d_____

Argued - January 19, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-03394

DECISION & ORDER

Antonina Korina, et al., appellants, v New York City
Transit Authority, et al., respondents.

(Index No. 12769/04)

Kagan and Gertel, Brooklyn, N.Y. (Irving Gertel of counsel), for appellants.

Wallace D. Gossett, Brooklyn, N.Y. (Anita Isola of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (Minardo, J.), dated February 17, 2006, which denied their motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). The plaintiffs failed to make the requisite showing in this case. Indeed, the deposition testimony of the witness for the defendant New York City Transit Authority, which the plaintiffs submitted in support of their motion, raised questions of fact regarding the issue of liability. Accordingly, the Supreme Court properly denied the plaintiffs’ motion for summary judgment on the issue of liability.

SCHMIDT, J.P., RIVERA, COVELLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

February 27, 2007

KORINA v NEW YORK CITY TRANSIT AUTHORITY