

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

D14249
X/cb

_____AD3d_____

Argued - February 8, 2007

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
MARK C. DILLON
EDWARD D. CARNI, JJ.

2005-11919

DECISION & ORDER

Emily Lieberman, appellant, v Matthew Goldhagen,
et al., respondents.

(Index No. 03988/04)

Cascione, Purcigliotti & Galluzzi, P.C., New York, N.Y. (Thomas G. Cascione of counsel), for appellant.

Law Office of Alan B. Brill, P.C., Suffern, N.Y. (Ernest S. Buonocore of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Barone, J.), entered November 22, 2005, which granted the defendants' motion for summary judgment dismissing the complaint.

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

"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). Here, the defendants failed to meet their initial burden of establishing entitlement to judgment as a matter of law. Triable issues of fact exist, inter alia, as to whether the defendant Matthew Goldhagen was negligent in operating the vehicle registered to the defendant Susan Goldhagen and, if so, whether such negligence was a proximate cause of the accident (*see generally Cucci v Cucci*, 31 AD3d 598). Since the defendants failed to meet their initial burden as the movants, the sufficiency of the plaintiff's

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opposition papers need not be considered (*see Winegrad v New York Univ. Med. Ctr., supra*).

MASTRO, J.P., RIVERA, DILLON and CARNI, JJ., concur.

ENTER:


James Edward Felger
Clerk of the Court