

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

D16345
C/kmg

_____AD3d_____

Submitted - September 4, 2007

STEPHEN G. CRANE, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
EDWARD D. CARNI, JJ.

2006-11907

DECISION & ORDER

Kleomenis Elefantis, respondent, v P.O.P. Displays,
Inc., et al., appellants.

(Index No. 26627/05)

John P. Humphreys, New York, N.Y. (Evy L. Kazansky of counsel), for appellants.

Max D. Leifer, P.C., New York, N.Y. (Ira H. Zuckerman 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 (Schmidt, J.), dated September 12, 2006, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion for summary judgment on the issue of liability is denied.

In support of his motion for summary judgment on the issue of liability, the plaintiff submitted evidence demonstrating that the defendant Antonio Marcial was negligent in backing the tractor-trailer owned by the defendant P.O.P. Displays, Inc., into the plaintiff's parked vehicle (*see* Vehicle and Traffic Law § 1211[a]; *Ortiz v Calavera*, 26 AD3d 319; *Garcia v Verizon N. Y., Inc.*, 10 AD3d 339). However, in opposition, the defendants submitted competent evidence directly contradicting the plaintiff's version of how the accident occurred and raised a triable issue of fact on the issue of whether the plaintiff's vehicle was parked or standing behind the tractor-trailer at any time prior to the accident. Accordingly, the plaintiff's motion for summary judgment on the issue of liability should have been denied.

CRANE, J.P., GOLDSTEIN, SKELOS and CARNI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

October 2, 2007

ELEFANTIS v P.O.P. DISPLAYS, INC.