

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

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_____AD3d_____

Argued - October 12, 2007

STEPHEN G. CRANE, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2007-00417

DECISION & ORDER

Gaston Shorter, et al., plaintiffs-respondents,
v Kevin G. Witter, et al., defendants, Edgar
Rosa, defendant-respondent, Budget Rent A
Car System, Inc., et al., appellants.

(Index No. 19875/04)

Carfora Klar Gallo Vitucci Pinter & Cogan, LLP, New York, N.Y. (Yolanda L. Ayala, Matthew J. Vitucci, and Peter M. Khrinenko of counsel), for appellants.

Krause & Associates, P.C., New York, N.Y. (Ronald Yang of counsel), for plaintiffs-respondents.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Jennifer C. Friedrich of counsel), for defendant-respondent Edgar Rosa.

In an action to recover damages for personal injuries, etc., the defendants Budget Rent A Car System, Inc., Budget Rent A Car, and Alfredo Ramirez Garcia appeal from so much of an order of the Supreme Court, Queens County (Dorsa, J.), entered December 12, 2006, as denied their motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the order is reversed insofar as appealed from, on the law, with one bill of costs payable by the respondents appearing separately and filing separate briefs, and the motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against the appellants is granted.

November 13, 2007

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SHORTER v WITTER

The defendants Budget Rent A Car System, Inc., Budget Rent A Car, and Alfredo Ramirez Garcia established their prima facie entitlement to judgment as a matter of law by showing that their vehicle was not operated negligently and that the cause of the accident was the negligent operation of the vehicle driven by the defendant Edgar Rosa (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Gershman v Habib*, 37 AD3d 530; *Wilson v Certain Cab Corp.*, 303 AD2d 252, 253). In opposition, neither the plaintiffs nor any other defendant raised a triable issue of fact. The inconsistencies in the deposition testimony of the appellant Alfredo Ramirez Garcia, who testified through an interpreter, do not undermine the conclusion that he operated his vehicle in a non-negligent manner. Accordingly, the Supreme Court should have granted the appellants' motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

CRANE, J.P., FLORIO, ANGIOLILLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court