

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

D17981
X/prt

_____AD3d_____

Argued - January 10, 2008

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-11473

DECISION & ORDER

Lydia Nunez, et al., appellants,
v Albert C. Staley, respondent.

(Index No. 23680/05)

Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C., Mineola, N.Y. (Mark R. Bernstein of counsel), for appellants.

Kelly, Rode & Kelly, LLP, Mineola, N.Y. (Daniel E. Cerritos of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Kings County (Rivera, J.), dated October 6, 2006, which denied their motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiffs failed to make a prima facie showing of entitlement to judgment as a matter of law on the issue of liability. In particular, the plaintiffs' moving papers included a copy of the deposition transcript of the defendant, which raised triable issues of fact as to whether the plaintiff Lydia Nunez was negligent in the operation of her motor vehicle and whether her alleged negligence was a proximate cause of the accident (*see* Vehicle and Traffic Law § 375[2][a][3]; *Tepoz v Sosa*, 241 AD2d 449; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320).

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Accordingly, the Supreme Court correctly denied the plaintiffs' motion for summary judgment on the issue of liability.

SPOLZINO, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court