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

D18188
X/mv

_____AD3d_____ Submitted - January 30, 2008

A. GAIL PRUDENTI, P.J.
PETER B. SKELOS
HOWARD MILLER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2007-07206 DECISION & ORDER

Timoteo Delgado, et al., plaintiffs-respondents,
v Nadeem A. Butt, et al., appellants, Constantino
Balbuena Flores, et al., defendants-respondents.

(Index No. 33160/05)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for appellants.

Goldberg & Carlton, PLLC, New York, N.Y. (Robert H. Goldberg of counsel), for plaintiffs-respondents.

Composto & Composto, Brooklyn, N.Y. (Eric C. Bryant of counsel), for defendants-respondents.

In an action to recover damages for personal injuries, etc., the defendants Nadeem A. Butt and Mohammad Shakeel appeal from an order of the Supreme Court, Kings County (Kramer, J.), dated June 22, 2007, which denied their motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the order is affirmed, with one bill of costs.

A party moving for summary judgment has the burden of establishing his or her entitlement to judgment as a matter of law by coming forward with evidentiary proof, in admissible

form, demonstrating the absence of any disputed material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). In this case, which arises out of an automobile accident, the deposition testimony of the two drivers involved in the accident, which was submitted by the appellants in support of their motion for summary judgment, reveals numerous questions of fact as to the happening of the accident. Accordingly, the appellants failed to make a prima facie showing of entitlement to judgment as a matter of law, and thus, the Supreme Court properly denied their motion for summary judgment (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).

PRUDENTI, P.J., SKELOS, MILLER, COVELLO and McCARTHY, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court