

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

D18563
C/hu

_____AD3d_____

Submitted - February 11, 2008

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
FRED T. SANTUCCI
JOHN M. LEVENTHAL, JJ.

2007-06573

DECISION & ORDER

Fontina Sale, et al., appellants, v Gary Lee,
et al., respondents.

(Index No. 24019/06)

Thomas D. Wilson, P.C., Brooklyn, N.Y., for appellants.

Hawkins Feretic & Daly, LLP, New York, N.Y. (James M. Merlino of counsel), for
respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from
an order of the Supreme Court, Kings County (Vaughan, J.), dated June 13, 2007, which denied their
motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, the evidence submitted by the plaintiffs did not
establish, as a matter of law, that the injured plaintiff was free from comparative negligence (*see*
Thoma v Ronai, 82 NY2d 736, 737; *Cator v Filipe*, 47 AD3d 664; *Albert v Klein*, 15 AD3d 509,
510; *Valore v McIntosh*, 8 AD3d 662). Since the plaintiffs failed to meet their burden as the movants,
we need not review the sufficiency of the defendants' opposition papers (*see Winegrad v New York*
Univ. Med. Ctr., 64 NY2d 851; *Valore v McIntosh*, 8 AD3d 662).

RIVERA, J.P., SKELOS, SANTUCCI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

March 25, 2008

SALE v LEE