

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

D19719
O/kmg

_____AD3d_____

Argued - May 20, 2008

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
HOWARD MILLER
MARK C. DILLON, JJ.

2007-08433

DECISION & ORDER

Joseph Clarke, et al., appellants,
v Thomas Condon, Jr., et al., respondents.

(Index No. 5712/06)

Finkelstein & Partners, Newburgh, N.Y. (Kristine M. Cahill of counsel), for appellants.

James R. McCarl, Montgomery, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from so much of an order of the Supreme Court, Dutchess County (Pagones, J.), dated August 23, 2007, as denied their motion for summary judgment on the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiffs established their prima facie entitlement to summary judgment by submitting evidence showing that a vehicle driven by the defendant Joseph Condon and owned by the defendant Thomas Condon, Jr., crossed a double yellow line in violation of Vehicle and Traffic Law §1126(a) and struck an oncoming vehicle driven by the plaintiff Joseph Clarke (*see* CPLR 3212). However, a violation of that statute may be excused if it is established that the driver exercised reasonable care in an effort to comply with it (*see Aranzullo v Seidell*, 96 AD2d 1048, 1049). Here, the defendants raised a triable issue of fact as to whether the defendant driver exercised reasonable care under the circumstances (*see Pfaffenbach v White Plains Express Corp.*, 17 NY2d 132; *Espinal v Sureau*, 262 AD2d 523, 524).

RIVERA, J.P., RITTER, MILLER and DILLON, JJ., concur.

ENTER:


James Edward Pelzer

June 24, 2008

CLARKE v CONDON

Clerk of the Court

June 24, 2008

CLARKE v CONDON