

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

D19936
C/kmg

_____AD3d_____

Submitted - June 6, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2007-07760

DECISION & ORDER

Doreen Whack, etc., plaintiff-respondent,
v John Williams, et al., defendants-respondents,
Brian Cole, appellant.

(Index No. 19535/03)

Jerrold N. Cohen, Mineola, N.Y., for appellant.

Gregory J. Cannata, New York, N.Y., for plaintiff-respondent.

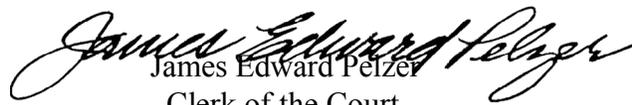
In an action, inter alia, to recover damages for personal injuries and wrongful death, the defendant Brian Cole appeals from an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated July 17, 2007, which denied his motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him.

ORDERED that the order is affirmed, with costs.

In support of his motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him, the defendant Brian Cole failed to make a prima facie showing of entitlement to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Triable issues of fact exist, inter alia, as to whether Cole contributed to the happening of the subject accident. Since Cole failed to meet his initial burden as the moving party, we need not review the sufficiency of the opposition papers (*see Parnes v Mitzy Transp.*, 44 AD3d 918).

RIVERA, J.P., LIFSON, COVELLO and BALKIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

July 1, 2008

WHACK v WILLIAMS