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

D21500
C/prt

_____AD3d_____ Submitted - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-10952 DECISION & ORDER

Naveed Ashif, plaintiff, v Won Ok Lee,
defendant third-party plaintiff-respondent,
Mohmmd Chowdhury, et al., third-party
defendants-appellants; Rehmat Khan, et al.,
third-party defendants-respondents.

(Index No. 21224/04)

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

Stockschlaeder, McDonald & Sules, P.C., New York, N.Y. (Richard T. Sules and Gail S. Karan of counsel), for defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, the third-party defendants Mohmmd Chowdhury and Domenico Mancini appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Hart, J.), dated October 18, 2007, as denied their cross motion for summary judgment dismissing the third-party complaint and all cross claims insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with costs to the defendant third-party plaintiff-respondent.

Contrary to the contention of the third-party defendants Mohmmd Chowdhury and Domenico Mancini (hereinafter the appellants), the unsigned deposition transcript of the third-party defendant Rehmat Khan, which Khan submitted in support of his motion for summary judgment, and which was relied upon by the defendant third-party plaintiff, Won Ok Lee, in opposition to the

appellants' cross motion for summary judgment, was admissible under CPLR 3116(a), since that transcript was submitted by the party deponent himself and therefore was adopted as accurate by Khan, as the deponent (*cf. McDonald v Mauss,* 38 AD3d 727; *Pina v Flik Intl. Corp.,* 25 AD3d 772, 773; *Scotto v Marra,* 23 AD3d 543). Similarly, the MV-104 accident report prepared by Khan was properly considered as a party admission (*see Fox v Tedesco,* 15 AD3d 538; *Castellano v Citation Cab Corp.,* 35 AD2d 842).

Upon consideration of all of the evidence in the record, we agree with the Supreme Court that the defendant third-party plaintiff succeeded in raising triable issues of fact in opposition to the appellants' prima facie showing of entitlement to summary judgment. Since there are genuine questions as to the manner in which the accident occurred and whether the operation of the appellants' vehicle caused or contributed to it, the appellants' cross motion for summary judgment was properly denied (*see e.g. Carhuayano v J&R Hacking,* 28 AD3d 413; *Taveras v Amir,* 24 AD3d 655).

MASTRO, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court