

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

D21747
G/nl

_____AD3d_____

Argued - December 12, 2008

ANITA R. FLORIO, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-08622

DECISION & ORDER

Norman Cohen, appellant, v Sterling Mets, L.P.,
respondent.

(Index No. 3971/05)

Lawrence Perry Biondi (Lisa M. Comeau, Garden City, N.Y., of counsel), for
appellant.

Havkins Rosenfeld Ritzert & Varriale, LLP, New York, N.Y. (Carla Varriale and
Jarett L. Warner of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Queens County (Hart, J.), entered August 7, 2007, which granted the
defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On its motion for summary judgment dismissing the complaint, the defendant
demonstrated its entitlement to judgment as a matter of law based upon the doctrine of primary
assumption of the risk (*see Roberts v Boys & Girls Republic, Inc.*, 10 NY3d 889; *Sutfin v Scheuer*,
74 NY2d 697, 698; *Koenig v Town of Huntington*, 10 AD3d 632, 633; *Starke v Town of Smithtown*,
155 AD2d 526, 527; *see also Pira v Sterling Equities, Inc.*, 16 AD3d 396, 396-397). In opposition,
the plaintiff failed to raise a triable issue of fact (*see Bereswill v National Basketball Assn.*, 279 AD2d
292, 293-294). Accordingly, the Supreme Court properly granted the defendant's motion.

FLORIO, J.P., COVELLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

January 27, 2009

COHEN v STERLING METS, L.P.