

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

D22123  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 8, 2009

PETER B. SKELOS, J.P.  
MARK C. DILLON  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG, JJ.

2008-02962

DECISION & ORDER

Yoly Gideon, et al., appellants, v Flatlands  
Beverage Distributors, Inc., et al., respondents.

(Index No. 15402/06)

Edward W. Armstrong, P.C., New York, N.Y. (John V. Decolator of counsel), for appellants.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, White Plains, N.Y. (Michael L. Boulhosa and Debra A. Adler 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 (Kramer, J.), dated February 19, 2008, which denied their motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiffs failed to demonstrate their entitlement to judgment as a matter of law on the issue of the injured plaintiff's lack of comparative negligence (*see Thoma v Ronai*, 82 NY2d 736, 737, *affg* 189 AD2d 635, 635-636; *Cator v Filipe*, 47 AD3d 664; *compare Hoey v City of New York*, 28 AD3d 717).

SKELOS, J.P., DILLON, ANGIOLILLO and ENG, JJ., concur.

February 17, 2009

GIDEON v FLATLANDS BEVERAGE DISTRIBUTORS, INC.

Page 1.

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2008-02962

DECISION & ORDER ON MOTION

Yoly Gideon, et al., appellants, v Flatlands  
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Motion by the respondents on an appeal from an order of the Supreme Court, Kings County, dated February 19, 2008, inter alia, for this Court to take judicial notice of an order of the same court dated May 5, 2008. By decision and order on motion of this Court dated September 10, 2008, that branch of the motion which was for this Court to take judicial notice of the order dated May 5, 2008, was held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the branch of the motion which was for this Court to take judicial notice of the order dated May 5, 2008, is denied as academic in light of the determination of the appeal from the order dated February 19, 2008 (*see Gideon v Flatlands Beverage Dist., Inc.*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]).

SKELOS, J.P., DILLON, ANGIOLILLO and ENG, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court