

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

D22421
G/hu

_____AD3d_____

Submitted - January 21, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2008-04138

DECISION & ORDER

Lewis Klee, respondent, v Americas Best Bottling
Co., Inc., et al., appellants.

(Index No. 17028/07)

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, N.Y. (Richard E. Lerner, Gregory S. Katz, and Trevor J. Barr of counsel), for appellants.

Thomas D. Wilson, P.C., Brooklyn, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated March 27, 2008, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, without costs or disbursements.

The plaintiff pedestrian was crossing the street in a crosswalk with the traffic signal in his favor when, as he was about three-quarters of the way across the street, he was struck on his left side by the defendants' vehicle as it was making a left turn. The evidence submitted by the plaintiff established, as a matter of law, that the defendant driver violated Vehicle and Traffic Law § 1112(a) and that the plaintiff was free from comparative negligence (*cf. Cator v Filipe*, 47 AD3d 664). In opposition, the defendants failed to raise a triable issue of fact. Accordingly, the plaintiff's motion for summary judgment on the issue of liability was properly granted.

SKELOS, J.P., SANTUCCI, ANGIOLILLO, DICKERSON and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

March 24, 2009

KLEE v AMERICAS BEST BOTTLING CO., INC.