

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

D23154
W/kmg

_____AD3d_____

Argued - April 6, 2009

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2008-02268

DECISION & ORDER

Burgess Tomlinson, appellant, v Blue Man
Group Corp., et al., respondents.

(Index No. 18321/05)

Thomas Guccione, Brooklyn, N.Y. (Louis R. Lombardi of counsel), for appellant.

Hoey, King, Toker & Epstein, New York, N.Y. (Edgar Matos of counsel), for
respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Vaughan, J.), dated November 28, 2007, as granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff, a stagehand, allegedly was injured while carrying a heavy stage prop, in a sling, up a flight of stairs in a building purportedly owned and/or maintained by the defendants. The sling was comprised of a stick and a chain, the latter securing the stage prop. The plaintiff supported the back end of the stick on his right shoulder, while a coworker similarly supported the front end of the stick. After the plaintiff commenced the present action to recover damages for personal injuries, the defendants moved for summary judgment dismissing the complaint. At his deposition, the plaintiff testified that he was "looking up" as he ascended the stairway, that he "misstepped a little bit," and that he subsequently experienced a sharp pain in his ankle.

May 12, 2009

TOMLINSON v BLUE MAN GROUP CORP.

Page 1.

The defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff's injuries were not proximately caused by any negligence on their part (*see Denicola v Costello*, 44 AD3d 990). In opposition, the plaintiff failed to submit evidence sufficient to raise a triable issue of fact.

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

MASTRO, J.P., COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court