

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

D23649  
C/kmg

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

Argued - May 19, 2009

A. GAIL PRUDENTI, P.J.  
STEVEN W. FISHER  
HOWARD MILLER  
PLUMMER E. LOTT, JJ.

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2008-06181

DECISION & ORDER

Martin Banks, appellant, v  
County of Westchester, respondent.

(Index No. 232/05)

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Robert C. Kilmer, Binghamton, N.Y., for appellant.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacy Dolgin-Kmetz and Justin R. Adin of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Donovan, J.), entered May 27, 2008, which granted the defendant's motion for summary judgment dismissing the complaint and denied his cross motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The defendant established, *prima facie*, its entitlement to judgment as a matter of law. In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint and denied the plaintiff's cross motion for summary judgment on the issue of liability.

PRUDENTI, P.J., FISHER, MILLER and LOTT, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

June 23, 2009

BANKS v COUNTY OF WESTCHESTER