

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

D25233
O/kmg

_____AD3d_____

Argued - November 2, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
HOWARD MILLER
DANIEL D. ANGIOLILLO, JJ.

2009-00199

DECISION & ORDER

William C. Morrison, Sr., et al., appellants,
v City of Poughkeepsie, et al., respondents.

(Index No. 3438/04)

Gellert & Klein, P.C., Poughkeepsie, N.Y. (James M. Fedorchak of counsel), for appellants.

Basso & Associates, P.C., Lagrangeville, N.Y. (Bryan G. Schneider of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Dutchess County (Brands, J.), dated November 20, 2008, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

On May 29, 2004, the injured plaintiff, William C. Morrison, Sr., was standing on the open tailgate of a pickup truck and discarding unwanted household items into a pit located at the City of Poughkeepsie Transfer Station (hereinafter the Transfer Station). He allegedly was injured when, in the process of unloading a wooden door, he lost his balance and fell into the pit. He and his wife, derivatively, commenced this action against the defendants, City of Poughkeepsie and Department of Public Works of the City of Poughkeepsie. The Supreme Court denied the defendants' motion for summary judgment dismissing the complaint. We reverse.

December 1, 2009

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The defendants submitted evidence sufficient to demonstrate their prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). The evidence established that the Transfer Station had been constructed in accordance with existing law. Moreover, the alleged negligence of the defendants in failing to provide a guardrail around the unloading platform was not a proximate cause of the injured plaintiff's accident (*see Plowden v Stevens Partners, LLC*, 45 AD3d 659; *Tutunjian v Cove Landing on Sound Homeowners Assn. Inc.*, 38 AD3d 531). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557).

DILLON, J.P., FLORIO, MILLER and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court