

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

D25248
G/prt

_____AD3d_____

Argued - October 29, 2009

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2008-06706

DECISION & ORDER

Wilfredo Rodriguez, respondent,
v Rose Martinelli, appellant.

(Index No. 35606/05)

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for appellant.

Peña & Kahn, PLLC, Bronx, N.Y. (Justin B. Katz of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from so much of an order of the Supreme Court, Kings County (F. Rivera, J.), dated June 27, 2008, as denied that branch of her motion which was for summary judgment on the issues of liability and apportionment.

ORDERED that the appeal is dismissed, without costs or disbursements, as the order dated June 27, 2008, was superseded by an order of the same court dated February 13, 2008 (*see Rodriguez v Martinelli*, _____AD3d_____ [Appellate Division Docket No. 2009-02793; decided herewith]).

RIVERA, J.P., DICKERSON, HALL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 8, 2009

RODRIGUEZ v MARTINELLI