

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

D27647
W/nl

_____AD3d_____

Submitted - May 19, 2010

MARK C. DILLON, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2010-02073

DECISION & ORDER

Charles Holloman, also known as Tyrone Grant,
appellant, v City of New York, defendant, Man Kong
Kwong, respondent (and a third-party action).

(Index No. 34462/05)

David M. Goldberg, Amenia, N.Y., for appellant.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Kings County (Jacobson, J.), dated January 8, 2010, which denied his
motion for summary judgment on the issue of liability against the defendant Man Kong Kwong.

ORDERED that the order is affirmed, with costs.

The plaintiff, an inmate in the custody of the City of New York Department of
Correction (hereinafter the DOC), alleges that he was injured in a motor vehicle incident that
occurred on August 10, 2004, while he was being transported in a DOC bus. After the DOC bus
collided with a minivan operated by the defendant Man Kong Kwong (hereinafter the respondent) on
the Brooklyn-Queens Expressway, the two vehicles attempted to pull into the right lane of the
expressway. The plaintiff claims to have been injured due to, inter alia, the maneuvering and erratic
movements of the driver of the DOC bus as the driver attempted to move the bus into the right lane.

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The plaintiff failed to make a prima facie showing of his entitlement to judgment as a matter of law on the issue of liability against the respondent (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562). The affidavits of the plaintiff and of two other inmates who were passengers in the DOC bus failed to establish, prima facie, that the negligence of the respondent was the sole cause of the plaintiff's injuries by reason of his erratic movements in front of the DOC bus (*see Volberg v Hegeman Farms Co., Inc.*, 253 App Div 839; *see also Edwards v New York City Tr. Auth.*, 37 AD3d 157). Further, the unsworn, self-serving statements contained in the incident reports, which the plaintiff submitted in support of his motion, did not constitute evidentiary proof in admissible form (*see Toussaint v Ferrara Bros. Cement Mixer*, 33 AD3d 991, 992; *Bates v Yasin*, 13 AD3d 474; *Reed v New York City Tr. Auth.*, 299 AD2d 330, 332). Even if these reports could be qualified as business records, there is no foundation in the record to support their admissibility (*see CPLR 4518[a]*). Accordingly, the plaintiff's motion for summary judgment on the issue of liability against the respondent was properly denied.

DILLON, J.P., SANTUCCI, BALKIN, BELEN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court