

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

D28566  
C/kmg

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

Argued - September 10, 2010

WILLIAM F. MASTRO, J.P.  
THOMAS A. DICKERSON  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

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2009-01973

DECISION & ORDER

Rebecca Shumake, appellant, v Good Samaritan  
Hospital of Suffern, N.Y., et al., respondents.

(Index No. 200/06)

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Condon & Associates, PLLC, Nanuet, N.Y. (Brian K. Condon of counsel), for  
appellant.

Steinberg, Symer & Platt, LLP, Poughkeepsie, N.Y. (Ellen Fischer Bopp of counsel),  
for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Rockland County (Garvey, J.), dated January 13, 2009, which granted  
the defendants' motion for summary judgment dismissing the complaint.

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

Contrary to the determination of the Supreme Court, the defendants failed to sustain  
their initial burden of establishing their prima facie entitlement to judgment as matter of law (*see  
generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, their motion for summary  
judgment dismissing the complaint should have been denied, and we need not consider whether the  
plaintiff's opposition papers were sufficient to raise a triable issue of fact (*see Winegrad v New York  
Univ. Med. Ctr.*, 64 NY2d 851, 853; *Negassi v Royle*, 65 AD3d 1311, 1312).

MASTRO, J.P., DICKERSON, ROMAN and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan

October 12, 2010

SHUMAKE v GOOD SAMARITAN HOSPITAL OF SUFFERN, N.Y.

Clerk of the Court

October 12, 2010

SHUMAKE v GOOD SAMARITAN HOSPITAL OF SUFFERN, N.Y.