

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

D29012
Y/prt

_____AD3d_____

Argued - September 13, 2010

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2009-05475

DECISION & ORDER

Martin J. Ain, appellant, v C.A.C. Industries, Inc.,
et al., respondents.

(Index No. 11730/03)

Frank M. Graziadei, P.C., New York, N.Y. (Edward S. Rudofsky of counsel), for
appellant.

White, Fleischner & Fino, LLP, New York, N.Y. (Jared T. Greisman and Sara N.
Robbin of counsel), for respondents.

In an action to recover damages for injury to property, the plaintiff appeals from an
order of the Supreme Court, Queens County (Schulman, J.), dated April 30, 2009, which denied his
motion to reject a referee's report (Rosen, R.) dated December 8, 2008, made after a hearing,
recommending that the complaint be dismissed in its entirety, and granted the defendants' cross
motion to confirm the report.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action against the City of New York and C.A.C.
Industries, Inc. (hereinafter CAC), a corporation hired by the City to repair and perform work on the
streets adjoining the plaintiff's property, alleging that the work performed by CAC caused damage
to the plaintiff's home. The matter was referred to a referee to hear and report on all issues. The
referee recommended that the complaint be dismissed in its entirety.

The Supreme Court properly denied the plaintiff's motion to reject the referee's report

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and properly granted the defendants' cross motion to confirm the report. The record supports the referee's finding that the plaintiff failed to establish that it was more likely that the defendants' activities, rather than some other cause, led to the damage to the plaintiff's property (*see Gayle v City of New York*, 92 NY2d 936, 937; *Ferentini v Ferentini*, 72 AD3d 882, 883).

The plaintiff's remaining contentions either are unpreserved for appellate review or need not be reached in light of our determination.

SKELOS, J.P., ANGIOLILLO, HALL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court