

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

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_____AD3d_____

Argued - October 1, 2010

PETER B. SKELOS, J.P.
RANDALL T. ENG
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2009-06866

DECISION & ORDER

Claudia Passaro, appellant, v Jeff Bouquio, respondent.

(Index No. 13778/06)

Rodney Drake, Bohemia, N.Y. (Joseph B. Fazio of counsel), for appellant.

Goldberg Segalla, LLP, Mineola, N.Y. (Brian W. McElhenny of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Emerson, J.), dated June 11, 2009, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant established his prima facie entitlement to judgment as a matter of law by demonstrating that the apparatus the plaintiff was using was not defective and that the plaintiff was unable to identify the cause of her accident (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Zuckerman v City of New York*, 49 NY2d 557, 562; *Slattery v O'Shea*, 46 AD3d 669). In opposition, the plaintiff failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d at 562). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

SKELOS, J.P., ENG, BELEN and HALL, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

December 28, 2010

PASSARO v BOUQUIO