

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

D29747  
O/hu

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

Argued - December 21, 2010

THOMAS A. DICKERSON, J.P.  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL  
LEONARD B. AUSTIN, JJ.

---

2010-02553

DECISION & ORDER

John P. Gardella, appellant, v Esposito Foods, Inc.,  
et al., respondents.

(Index No. 24490/08)

---

Weiss & Rosenbloom, P.C., New York, N.Y. (Erik L. Gray of counsel), for appellant.

Charles J. Siegel, New York, N.Y. (Alfred T. Lewyn of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Starkey, J.), dated December 21, 2009, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff failed to establish his prima facie entitlement to judgment as a matter of law on the issue of liability (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). “There can be more than one proximate cause of an accident” (*Cox v Nunez*, 23 AD3d 427, 427; *see Topalis v Zwolski*, 76 AD3d 524; *Todd v Godek*, 71 AD3d 872, 872). Under the circumstances here, even if the defendant driver violated Vehicle and Traffic Law §§ 1143 and 1211(a), the bare affidavit of the plaintiff did not establish, as a matter of law, the plaintiff’s freedom from comparative negligence (*see generally Cali v Mustafa*, 68 AD3d 700, 701; *cf. Sanabria v Paduch*, 61 AD3d 839).

Accordingly, the Supreme Court correctly denied the plaintiff's motion for summary judgment on the issue of liability.

DICKERSON, J.P., LEVENTHAL, HALL and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court