

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

D29942
O/kmb

_____AD3d_____

Argued - January 4, 2011

ANITA R. FLORIO, J.P.
RANDALL T. ENG
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2010-05178

DECISION & ORDER

Elaina Mackenzie, appellant,
v City of New York, respondent.

(Index No. 7651/09)

Cheven, Keely & Hatzis, New York, N.Y. (Chris M. Hatzis, Mark L. Levenson, and Mayu Miyashita of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo, Elizabeth I. Freedman, and June Witterschein 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 (Sherman, J.), dated May 7, 2010, which denied her cross motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

In support of her cross motion for summary judgment on the issue of liability, the plaintiff failed to make a prima facie showing that she was free from comparative fault (*see Singh v Doo Jae Lee*, 76 AD3d 555; *Roman v Al Limousine, Inc.*, 76 AD3d 552; *Yuen Lum v Wallace*, 70 AD3d 1013; *Sale v Lee*, 49 AD3d 854; *Valore v McIntosh*, 8 AD3d 662). As such, the plaintiff failed to establish, prima facie, her entitlement to judgment as a matter of law on the issue of the defendant's liability (*see Thoma v Ronai*, 82 NY2d 736; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Since the plaintiff failed to meet her burden, we need not review the sufficiency of the defendant's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the

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Supreme Court properly denied the plaintiff's cross motion for summary judgment on the issue of liability.

FLORIO, J.P., ENG, BELEN and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court