

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

D30686
C/prt

_____AD3d_____

Argued - February 25, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-01034

DECISION & ORDER

Daniel Castiglione, etc., appellant, v
James F. Quinn, etc., respondent.

(Index No. 16246/08)

Anthony J. Montiglio, Mineola, N.Y., for appellant.

Kelly, Rode & Kelly, LLP, Mineola, N.Y. (Susan M. Ulrich of counsel), for
respondent.

In an action, inter alia, to recover damages for personal injuries, etc., the plaintiff
appeals from an order of the Supreme Court, Suffolk County (Jones, Jr., J.), entered January 6, 2010,
which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

On October 31, 2007, the plaintiff's daughter was sitting on the curb at the corner of
Idle Hour Blvd. and Biltmore Avenue in Oakdale when she was struck in the left eye by an egg
allegedly thrown by the defendant's son. The plaintiff commenced this action, inter alia, to recover
damages for the personal injuries sustained by his daughter as a result of the incident. Issue was
joined, and the plaintiff moved for summary judgment on the issue of liability. The Supreme Court
denied the motion, and we affirm.

The plaintiff failed to tender sufficient evidence to establish his prima facie entitlement
to judgment as a matter of law. The conclusory assertions in the affidavit of the plaintiff's daughter
were insufficient to demonstrate the absence of any material issues of fact and warrant summary

judgment (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, the Supreme Court properly denied the motion, without regard to the sufficiency of the opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

The parties' remaining contentions are without merit or need not be reached in light of our determination.

MASTRO, J.P., CHAMBERS, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court