

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

D30870
O/kmb

_____AD3d_____

Submitted - March 28, 2011

DANIEL D. ANGIOLILLO, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
SANDRA L. SGROI, JJ.

2010-05440

DECISION & ORDER

Ronald Kutkiewicz, et al., appellants,
v Kevin R. Horton, Jr., respondent.

(Index No. 40382/07)

Ronald M. Schiffman (Alexander J. Wulwick, New York, N.Y. of counsel), for appellants.

Richard T. Lau, Jericho, N.Y. (Nancy Goodman of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated March 26, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On October 11, 2007, the injured plaintiff, Ronald Kutkiewicz (hereinafter Kutkiewicz) was operating his vehicle eastbound on the South Service Road of Sunrise Highway in the Town of Brookhaven when he turned northeast to enter Sunrise Highway by an access ramp. The defendant, Kevin R. Horton, Jr., was operating his vehicle westbound on the South Service Road, and the two vehicles collided, allegedly causing injuries to both Kutkiewicz and Horton. Kutkiewicz and his wife, suing derivatively, commenced an action against Horton. After discovery, Horton moved for summary judgment dismissing the complaint. In support of his motion, Horton submitted his own deposition testimony as well as Kutkiewicz's deposition testimony. The Supreme Court granted Horton's motion, and the plaintiffs appeal. We affirm.

April 19, 2011

KUTKIEWICZ v HORTON

Page 1.

When viewed in the light most favorable to the nonmoving parties, here the plaintiffs (*see Stukas v Streiter*, _____AD3d_____, 2011 NY Slip Op 01832 [2d Dept 2011]), the evidence Horton submitted in support of the motion established prima facie that the sole proximate cause of the accident was Kutkiewicz's failure to yield the right of way to Horton's vehicle (*see Yelder v Walters*, 64 AD3d 762, 763-764; *Vainer v DiSalvo*, 79 AD3d 1023, 1024). In opposition, the plaintiffs failed to demonstrate a triable issue of fact as to whether Horton was at fault in the happening of the accident (*see Yelder v Walters*, 64 AD3d at 764; *Vainer v DiSalvo*, 79 AD3d at 1024). Consequently, the Supreme Court properly granted Horton's motion for summary judgment dismissing the complaint.

ANGIOLILLO, J.P., BALKIN, LEVENTHAL and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court