

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

D31059  
Y/sml

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

Argued - March 22, 2011

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

---

2009-07420

DECISION & ORDER

Rocco Giannattasio, appellant, v Han Suk Kang,  
et al., defendants, New York City Off-Track  
Betting Corp., respondent.

(Index No. 38610/01)

---

Lester B. Herzog, Brooklyn, N.Y., for appellant.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Seth M. Weinberg and Jeffrey Pincus of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Vaughan, J.), dated June 17, 2009 which, upon a jury verdict, is against him and in favor of the defendant New York City Off-Track Betting Corp. dismissing the complaint insofar as asserted against it.

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiff's contentions, he was not deprived of a fair trial due to the trial court's evidentiary rulings, demeanor, and rejection of proposed jury instructions (*see generally DeCrescenzo v Gonzalez*, 46 AD3d 607, 608-609; *Gallo v Supermarkets Gen. Corp.*, 112 AD2d 345, 348). The plaintiff's contention that the trial court erred in declining to poll the jury is without merit,

as the plaintiff's counsel made the request after the jury exited the courtroom (*see generally Duffy v Vogel*, 12 NY3d 169, 175).

The plaintiff's remaining contentions are without merit.

MASTRO, J.P., FLORIO, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court