

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

D31067
C/kmb

_____AD3d_____

Argued - April 5, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
RANDALL T. ENG, JJ.

2010-03660

DECISION & ORDER

Erik McKay, appellant, v Manhattan and Bronx
Surface Transit Operating Authority, etc., et al.,
respondents.

(Index No. 43840/07)

Blank & Star, Brooklyn, N.Y. (Helene R. Blank and Scott Star of counsel), for
appellant.

Wallace D. Gossett, Brooklyn, N.Y. (Lawrence Heisler of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from so
much of an order of the Supreme Court, Kings County (Velasquez, J.), dated February 2, 2010, as
denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff was attempting to board a bus owned and operated by the defendant
Manhattan and Bronx Surface Transit Operating Authority and the defendant New York City Transit
Authority and driven by the defendant Toney Robinson (hereinafter collectively the defendants). He
allegedly was injured when, while attempting to board the bus, the bus doors were closed on him
before he was completely on the bus and the bus began to move, dragging him and causing him to
strike a bus-stop sign. The plaintiff commenced this action against the defendants and thereafter
moved for summary judgment on the issue of liability. The Supreme Court denied the motion. We
affirm.

May 3, 2011

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The plaintiff demonstrated his prima facie entitlement to judgment as a matter of law. In opposition, however, the defendants raised triable issues of fact regarding the plaintiff's comparative fault (*see Ortiz v Pina*, 298 AD2d 509, 510; *Shea v New York City Tr. Auth.*, 289 AD2d 558, 559; *Gross v New York City Tr. Auth.*, 256 AD2d 128, 130). Accordingly, the Supreme Court correctly denied the plaintiff's motion for summary judgment on the issue of liability.

In light of our determination, the parties' remaining contentions need not be addressed.

DILLON, J.P., FLORIO, BALKIN and ENG, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court