

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

D31471  
O/prt

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

Submitted - May 9, 2011

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

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2011-01396

DECISION & ORDER

Chang-Hoon Lee, appellant, v Kew Gardens Sung  
Shin Reformed Church of New York, et al.,  
respondents.

(Index No. 10919/09)

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Levin & Chetkof, LLP, Westbury, N.Y. (Howard A. Chetkof of counsel), for  
appellant.

Molod Spitz & DeSantis, P.C., New York, N.Y. (Marcy Sonneborn of counsel), for  
respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Queens County (Taylor, J.), dated October 22, 2010, which denied his  
motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff failed to establish his prima facie entitlement to judgment as a matter of  
law on the issue of liability. Although he demonstrated, prima facie, that he had the right of way in  
an intersection in which his car and a vehicle owned by the defendant Kew Gardens Sung Shin  
Reformed Church of New York, and operated by the defendant Young Soo Su, collided, the plaintiff  
failed to establish his freedom from comparative fault (*see Roman v Al Limousine, Inc.*, 76 AD3d  
552; *Borukhow v Cuff*, 48 AD3d 726, 727). The evidence submitted by the plaintiff in support of his  
motion demonstrated that the front passenger side of his vehicle collided with the middle, driver's

May 31, 2011

Page 1.

CHANG-HOON LEE v  
KEW GARDENS SUNG SHIN REFORMED CHURCH OF NEW YORK

side, of the defendants' 15-passenger van, thus suggesting that the defendants' vehicle was well within the intersection at the point of impact. The plaintiff's evidence further showed that the force of the impact of his car upon the defendants' van propelled the large van across the intersection, onto a sidewalk, and into a tree and another car, suggesting that it was traveling at a high rate of speed. Under these circumstances, the plaintiff failed to establish, prima facie, that he saw "that which through proper use of [his] senses [he] should have seen," and that he used reasonable care to avoid the collision (*Goemans v County of Suffolk*, 57 AD3d 478, 479, quoting *Bongiovi v Hoffman*, 18 AD3d 686, 687; see *Lopez v Reyes-Flores*, 52 AD3d 785, 786; *Borukhow v Cuff*, 48 AD3d at 727; *Campbell-Lopez v Cruz*, 31 AD3d 475, 475-476; *Cox v Nunez*, 23 AD3d 427, 427-428; *Millus v Milford*, 289 AD2d 543, 543-544; see also *Tapia v Royal Tours Serv., Inc.*, 67 AD3d 894, 896). Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on the issue of liability.

SKELOS, J.P., DICKERSON, HALL and SGROI, 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