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

D31994
C/kmb

_____AD3d_____ Argued - June 16, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-03873 DECISION & ORDER

Bi Bo Chiu, respondent, v Rubina K. Malik, et al., defendants, Rachel E. Freier, et al., appellants.

(Index No. 36894/07)

Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., of counsel), for appellants.

Wade T. Morris, New York, N.Y. (Brian J. Isaac of counsel), for respondent.

Hannum Feretic Prendergast & Merlino, LLC, New York, N.Y. (Jessica G. Price of counsel), for defendants Rubina K. Malik and Sheraz A. Malik.

Composto & Composto, Brooklyn, N.Y. (Judith Elsherbini of counsel), for defendant Tony Y. Chiu.

In an action to recover damages for personal injuries, the defendants Rachel E. Freier and Tzvi D. Freier appeal from an order of the Supreme Court, Kings County (Schack, J.), dated February 5, 2010, which granted the plaintiff's motion, in effect, for leave to renew her opposition to that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them, which motion had been granted in an order of the same court dated April 3, 2009, and, upon renewal, denied that branch of their motion, with leave to renew upon completion of discovery.

ORDERED that the order dated February 5, 2010, is affirmed, with costs to the respondent.

The Supreme Court providently exercised its discretion in granting the plaintiff's

motion, in effect, for leave to renew her opposition to that branch of the motion of the defendants Rachel E. Freier and Tzvi D. Freier (hereinafter together the defendants) which was for summary judgment dismissing the complaint insofar as asserted against them (*see* CPLR 2221[e]). Upon renewal, the plaintiff submitted evidence sufficient to raise a triable issue of fact in opposition to the defendants' prima facie establishment of their entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). The new evidence submitted by the plaintiff raised a triable issue as to the credibility of the defendant Rachel E. Freier and the facts surrounding the subject multi-vehicle accident. Accordingly, the Supreme Court, upon renewal, properly denied that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against them, with leave to renew upon completion of discovery.

ANGIOLILLO, J.P., DICKERSON, HALL and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court