

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

D32325  
Y/ct

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

Argued - September 6, 2011

MARK C. DILLON, J.P.  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
JEFFREY A. COHEN, JJ.

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2011-03851

DECISION & ORDER

Edward Rodgers, et al., appellants, v Charles Duffy,  
Jr., et al., respondents.

(Index No. 11645/10)

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Goldblatt & Associates, P.C., Mohegan Lake, N.Y. (Kenneth B. Goldblatt of  
counsel), for appellants.

Kaplan, Hanson, McCarthy, Adams, Finder & Fishbein, Yonkers, N.Y. (Jeffrey A.  
Domoto of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiffs appeal from an  
order of the Supreme Court, Westchester County (Tolbert, J.), entered March 22, 2011, which denied  
their motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

On August 5, 2007, the injured plaintiff, Edward Rodgers (hereinafter Rodgers), was  
a front-seat passenger in a vehicle operated by the defendant Charles Duffy, Jr. (hereinafter Duffy).  
Earlier that evening Rodgers and Duffy met at Duffy's girlfriend's apartment for approximately one  
hour, after which they went to a bar. It is undisputed that both Rodgers and Duffy consumed one or  
two beers at each location. As Duffy was driving Rodgers home, his vehicle veered off the roadway  
and ultimately struck a telephone pole, allegedly injuring Rodgers.

In April 2010, Rodgers and his wife, Cindy Rodgers, suing derivatively, commenced  
this action against, among others, Duffy and his mother, Diana Duffy, the owner of the vehicle. The

Supreme Court denied the plaintiffs' motion for summary judgment on the issue of liability. We affirm.

In support of their motion for summary judgment on the issue of liability, the plaintiffs failed to establish as a matter of law that Rodgers was free from culpable conduct with regard to the causation of his injuries (*see Strychalski v Dailey*, 65 AD3d 546; *see also Mackenzie v City of New York*, 81 AD3d 699; *Roman v Al Limousine, Inc.*, 76 AD3d 552). Therefore, they failed to establish their entitlement to judgment as a matter of law on the issue of the defendants' liability (*see Thoma v Ronai*, 82 NY2d 736; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Since the plaintiffs failed to meet their initial burden, we need not review the sufficiency of the defendants' opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the Supreme Court properly denied the plaintiffs' motion for summary judgment on the issue of liability.

DILLON, J.P., ANGIOLILLO, DICKERSON and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court