

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

D32450
C/kmb

_____AD3d_____

Submitted - September 8, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2010-08797

DECISION & ORDER

Sha-Kie Williams, plaintiff-respondent, v Suffolk
County Sheriff's Department, et al., appellants,
Island Elevator Corporation, et al., defendants-respondents.

(Index No. 30751/03)

Christine Malafi, County Attorney, Hauppauge, N.Y. (Christopher A. Jeffreys of counsel), for appellants.

Dinkes & Schwitzer, P.C., New York, N.Y. (Andrea M. Arrigo of counsel), for plaintiff-respondent.

Camacho Mauro Mulholland, LLP, New York, N.Y. (Murad X. Agi of counsel), for defendants-respondents.

In an action to recover damages for personal injuries, the defendants Suffolk County Sheriff's Department and County of Suffolk appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Mayer, J.), dated May 21, 2010, as denied that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them based on the plaintiff's failure to comply with General Municipal Law § 50-h, and, in effect, denied those branches of their motion which were for summary judgment on their cross claims against the defendants Island Elevator Corporation, Brink Elevator Corp., and Barist Elevator Company, Inc., for defense and contractual indemnification.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

October 4, 2011

WILLIAMS v SUFFOLK COUNTY SHERIFF'S DEPARTMENT

Page 1.

The plaintiff alleged that, on July 29, 2003, when he was an inmate at the Suffolk County Riverhead Correctional Facility, he fell down an elevator shaft on the premises and was injured. The plaintiff served a notice of claim dated September 12, 2003, and a hearing pursuant to General Municipal Law § 50-h was conducted on November 12, 2003. Thereafter, the plaintiff commenced this action against the Suffolk County Sheriff's Department and the County of Suffolk (hereinafter together the County defendants) and two elevator companies, Island Elevator Company and Brink Elevator Corp., that had entered into maintenance contracts with the County of Suffolk between 1999 and 2003. The defendant Barist Elevator Company also had a maintenance contract with the County of Suffolk during that period of time.

Contrary to the contentions of the County defendants, a review of the hearing transcript demonstrates that the plaintiff sufficiently complied with General Municipal Law § 50-h at the hearing (*see Matter of Johnson v City of Yonkers*, 262 AD2d 563, 563). Accordingly, the Supreme Court properly determined that dismissal of the complaint was not warranted for failure to comply with that statute.

The Supreme Court properly denied that branch of the motion of the County defendants which was for summary judgment on their cross claims for contractual indemnification, as there are issues of fact as to whose negligence, if any, caused the plaintiff's accident (*see Erickson v Cross Ready Mix, Inc.*, 75 AD3d at 524; *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930).

Additionally, the County defendants did not establish their prima facie entitlement to judgment as a matter of law on that branch of their motion which was for summary judgment on their cross claims for a defense (*see Bellefleur v Newark Beth Israel Med. Ctr.*, 66 AD3d 807, 809; *George v Marshalls of MA, Inc.*, 61 AD3d at 930). Therefore, the Supreme Court properly denied that branch of their motion.

RIVERA, J.P., FLORIO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court