

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

D32528
O/prt

_____AD3d_____

Argued - September 26, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-07202

DECISION & ORDER

Mary E. Acevedo, etc., appellant, v
Hog Wing Lau, et al., respondents.

(Index No. 40505/07)

David J. Hernandez, Brooklyn, N.Y. (Richard H. Gottesman of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Partnow, J.), dated June 29, 2010, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

In support of their motion for summary judgment dismissing the complaint, the defendants made a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any triable issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Zuckerman v City of New York*, 49 NY2d 557, 562). In opposition, the plaintiff failed to raise a triable issue of fact.

We note that while the person on whose behalf the plaintiff commenced this action suffers from, among other things, significant cognitive impairments as a result of the subject accident

October 11, 2011

Page 1.

ACEVEDO v HOG WING LAU

and, thus, is not held to as high a degree of proof (*see Noseworthy v City of New York*, 298 NY 76), the plaintiff is not relieved of the obligation to provide some proof from which negligence can reasonably be inferred, which she failed to do (*see DeLuca v Cerda*, 60 AD3d 721, 722; *see also Melendez v Parkchester Med. Servs., P.C.*, 76 AD3d 927, 928).

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

SKELOS, J.P., BALKIN, LEVENTHAL and HALL, 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