

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

D32550
O/kmb

_____AD3d_____

Argued - September 27, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2010-09673

DECISION & ORDER

Tung Wa Ma, etc., et al., plaintiffs-respondents, v
New York City Transit Authority, et al., appellants,
David I. Cho, et al., defendants-respondents, et al.,
defendants.

(Index No. 10471/08)

Morris Duffy Alonso & Faley, New York, N.Y. (Iryna S. Krauchanka and Andrea M. Alonso of counsel), for appellants.

Jonathan D'Agostino & Associates, P.C., Staten Island, N.Y. (Glen Devora of counsel), for plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the defendants New York City Transit Authority, New York City Metropolitan Transportation Authority, MTA Bus Company, and Ernie Lamboy appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Cullen, J.), entered August 25, 2010, as denied their motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied the motion of the defendants New York City Transit Authority, New York City Metropolitan Transportation Authority, MTA Bus Company, and Ernie Lamboy (hereinafter collectively the appellants) for summary judgment dismissing the complaint and all cross claims insofar as asserted against them, as the appellants failed to establish their prima facie entitlement to judgment as a matter of law. The appellants failed to establish that

October 18, 2011

Page 1.

TUNG WA MA v NEW YORK CITY TRANSIT AUTHORITY

they were free from negligence as a matter of law (*see Pollack v Margolin*, 84 AD3d 1341, 1342; *Lopez v Reyes-Flores*, 52 AD3d 785, 786).

RIVERA, J.P., FLORIO, AUSTIN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court