

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

D32551
O/kmb

_____AD3d_____

Argued - September 27, 2011

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

2010-09675

DECISION & ORDER

Resham Singh, plaintiff-respondent, v MTA Bus Company, et al., appellants, David I. Cho, defendant-respondent.

(Index No. 5583/08)

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

Jerald D. Werlin, Long Island City, N.Y. (Peter W. Dizozza of counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the defendants 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 MTA Bus Company and Ernie Lamboy (hereinafter together 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 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; *Borukhow v Cuff*, 48 AD3d 726, 727). Moreover, “the appellants failed to eliminate all triable issues of fact as to whether [Lamboy] was faced with an

emergency situation not of his own making and, if so, whether his actions were reasonable and prudent in that context” (*Crawford-Dunk v MV Transp., Inc.*, 83 AD3d 764, 765; *see Khan v Canfora*, 60 AD3d 635, 636; *Takle v New York City Tr. Auth.*, 14 AD3d 608).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court