

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

D32656
N/kmb

_____AD3d_____

Argued - September 26, 2011

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

2010-11306

DECISION & ORDER

Brendan Becci, respondent, v Worldwide
Flight Services, Inc., et al., appellants.

(Index No. 43258/08)

Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, N.Y. (Richard E. Lerner, Gary A. Gardner, and Judy C. Selmecci of counsel), for appellants.

Daniel P. Buttafuoco & Associates, PLLC, Woodbury, N.Y. (Ellen Buchholz of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Suffolk County (Whelan, J.), dated October 19, 2010, which granted the plaintiff's renewed motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

In an order dated November 5, 2009, the Supreme Court denied, as premature, the plaintiff's initial motion for summary judgment on the issue of liability, without prejudice to renewal. In support of his renewed motion for summary judgment on the issue of liability, the plaintiff demonstrated that he was walking in a warehouse while the defendant Shing Yung Tung, who was employed by the defendant Worldwide Flight Services, Inc., was operating a forklift in reverse. The forklift struck the plaintiff in the back, allegedly causing injuries. The evidence submitted by the plaintiff further demonstrated, prima facie, that he exercised due care while walking in the warehouse. This proof was sufficient to establish the plaintiff's prima facie entitlement to judgment as a matter of law on the issue of liability, including his freedom from comparative fault (*see Lopez v WS Distrib., Inc.*, 34 AD3d 759; *see also Martinez v Kreychmar*, 84 AD3d 1037; *Torres*

October 25, 2011

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v American Bldg. Maintenance Co. of NY, 51 AD3d 905). In opposition, the defendants failed to raise a triable issue of fact. The evidence submitted in connection with the plaintiff's renewed motion for summary judgment on the issue of liability does not support the defendants' speculative assertions of comparative fault on the part of the plaintiff.

Accordingly, the Supreme Court properly granted the plaintiff's renewed motion for summary judgment on the issue of liability.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court