

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

D32816
H/kmb

_____AD3d_____

Argued - October 24, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2010-07448

DECISION & ORDER

Amedeo Ebarilli, et al., respondents, v Shi Sen Li,
et al., defendants, City of New York, appellant.

(Index No. 24386/06)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Norman Corenthal of counsel), for appellant.

Fink & Platz (Arnold E. DiJoseph, P.C., New York, N.Y., of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant City of New York appeals from an order of the Supreme Court, Queens County (Flug, J.), dated June 8, 2010, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

Inasmuch as the defendant City of New York failed to meet its prima facie burden, the Supreme Court properly denied its motion for summary judgment dismissing the complaint insofar as asserted against it without considering the sufficiency of the plaintiffs' papers in opposition (*see Morales v County of Suffolk*, 82 AD3d 1184, 1185-1186).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court

November 9, 2011

EBARILLI v SHI SEN LI