

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

D32849
C/nl

_____AD3d_____

Argued - October 14, 2011

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-09734

DECISION & ORDER

Keith Doland, et al., appellants, v James L. Stephenson,
et al., respondents, et al., defendants.
(Action No. 1)

Keith Doland, et al., appellants, v Gilles T. Martin,
also known as Gino Martinez, respondent.
(Action No. 2)

(Index Nos. 12492/08, 12489/08)

Anthony J. Pirrotti, P.C., Ardsley, N.Y. (Nicole M. Murdocca on the brief), for
appellants.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Michael T. Colavecchio and Seth
Weinberg of counsel), for respondents James L. Stephenson and Norsk Metal, Inc.

Burke Lipton & Gordon, White Plains, N.Y. (Stephen P. Falvey of counsel), for
respondent Gilles T. Martin, also known as Gino Martinez.

In two related actions to recover damages for personal injuries, etc., which were
joined for trial, the plaintiffs appeal, as limited by their brief, from so much of a judgment of the
Supreme Court, Westchester County (Smith, J.), entered October 1, 2010, as, after a trial on the issue
of damages, and upon the granting of the motion of the defendants James L. Stephenson and Norsk
Metal, Inc., pursuant to CPLR 4401, made at the close of evidence, to dismiss the complaint in
Action No. 1 insofar as asserted against them, and upon the granting of the motion of the defendant

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DOLAND v MARTIN, also known as MARTINEZ

Gilles T. Martin, also known as Gino Martinez, pursuant to CPLR 4401, made at the close of evidence, to dismiss the complaint in Action No. 2, is in favor of those defendants and against them, dismissing the complaint in Action No. 1 insofar as asserted against the defendants James L. Stephenson and Norsk Metal, Inc., and dismissing the complaint in Action No. 2.

ORDERED that the judgment is affirmed insofar as appealed from, with one bill of costs to the respondents appearing separately and filing separate briefs.

A trial court may grant a motion pursuant to CPLR 4401 for judgment as a matter of law where it finds that, upon the evidence presented, “there is no rational process by which the fact trier could base a finding in favor of the nonmoving party” (*Szczerbiak v Pilat*, 90 NY2d 553, 556). In considering the motion, “the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant” (*id.* at 556).

Since there was insufficient evidence to show that the plaintiffs sustained any damage as a result of the subject accident, the Supreme Court properly granted the motions pursuant to CPLR 4401 for judgment as a matter of law. There was insufficient evidence from which the jury could rationally find that the plaintiff Keith Doland sustained an injury as a result of the first of the two subject accidents, or sustained an injury, or had an injury exacerbated, as a result of the second subject accident (*cf. Ogunti v Hellman*, 281 AD2d 404, 405).

The plaintiffs’ remaining contentions are without merit.

DILLON, J.P., DICKERSON, CHAMBERS and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court