

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

D32855  
H/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 18, 2011

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

2010-10315

DECISION & ORDER

Thomas Mulligan, plaintiff-respondent, v Harry A. Rausch, Jr., et al., appellants, Agostino Cervone, etc., et al., defendants-respondents.

(Index No. 8298/08)

Neil L. Kanzer (Fixler & LaGattuta, LLP, New York, N.Y. [Jason Fixler], of counsel), for appellants.

Salenger, Sack, Kimmel & Bavaro, LLP, New York, N.Y. (Carolyn Caccese of counsel), for plaintiff-respondent.

Geisler & Gabriele, LLP, Garden City, N.Y. (Lori A. Marano and Paul Scotti of counsel), for defendants-respondents George D. Keckeisen, Douglas M. Petraco, and Douglas M. Petraco, M.D., P.C.

Furey, Kerley, Walsh, Matera & Cinquemani, P.C., Seaford, N.Y. (Lauren B. Bristol of counsel), for defendant-respondent Peconic Bay Medical Center.

In an action to recover damages for personal injuries, the defendants Harry A. Rausch, Jr., and Frances C. Rausch appeal from an order of the Supreme Court, Suffolk County (Sweeney, J.), entered September 30, 2010, which denied their motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the order is affirmed, without costs or disbursements.

November 9, 2011

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The Supreme Court properly determined there were triable issues of fact requiring the denial of the appellants' motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

RIVERA, J.P., ENG, BELEN and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court