

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

D33078
C/prt

_____AD3d_____

Argued - November 4, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-08715

DECISION & ORDER

Edward J. Ahern, etc., appellant, v
Steven W. Shepherd, respondent.

(Index No. 17951/06)

James E. Bahamonde, P.C., North Bellmore, N.Y., for appellant.

Mazzei & Blair, Blue Point, N.Y. (Patricia Byrne Blair of counsel), for respondent.

In an action, inter alia, for injunctive relief and to recover damages for discrimination in the access to and use of a public accommodation on the basis of disability in violation of the Americans with Disabilities Act (42 USC § 12101 *et seq.*), Executive Law § 296, and Civil Rights Law § 40-c, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Gazzillo, J.), dated June 16, 2010, as denied his cross motion for summary judgment on the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

CPLR 3212(b) provides that “[a] motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions.” Here, the Supreme Court properly denied the plaintiff’s cross motion for summary judgment because he failed to include a copy of the pleadings in support of his cross motion, as required by CPLR 3212(b) (*see Fiber Consultants, Inc. v Fiber Optek Interconnect Corp.*, 84 AD3d 1153; *Liberty Doorworks, Inc. v Baranello*, 83 AD3d 1011; *Matter of Fraternal Order of Eagles v Board of Assessors*, 73 AD3d 770; *Zellner v Tarnell*, 54 AD3d 329; *Sendor v Chervin*, 51 AD3d 1003; *Thompson v Foreign Cars Ctr., Inc.*, 40 AD3d 965; *Matsyuk v Konkalipos*, 35 AD3d 675;

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Wider v Heller, 24 AD3d 433, 434; *Sted Tenants Owners Corp. v Chumpitaz*, 5 AD3d 663).

In light of our determination, we need not reach the plaintiff's remaining contention.

MASTRO, J.P., FLORIO, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court