

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

D33128
W/ct

_____AD3d_____

Submitted - November 4, 2011

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

2010-10593

DECISION & ORDER

Anthony McFadden, appellant, v 726 Liberty Corp.,
respondent.

(Index No. 3069/09)

Frederic A. Nicholson, Brooklyn, N.Y. (Elefterakis & Elefterakis, P.C. [Nicholas Elefterakis], of counsel), for appellant.

Russo, Keane & Toner, LLP, New York, N.Y. (Thomas F. Keane, Fern Flomenhaft, and Theresa C. Villani of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Lewis, J.), entered October 1, 2010, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

“[A] plaintiff's inability to identify the cause of the [subject] fall is fatal to the cause of action because a finding that the defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on speculation” (*Alabre v Kings Flatland Car Care Ctr., Inc.*, 84 AD3d 1286, 1287, quoting *Rajwan v 109–23 Owners Corp.*, 82 AD3d 1199, 1200; see *Capasso v Capasso*, 84 AD3d 997, 998; *Patrick v Costco Wholesale Corp.*, 77 AD3d 810). Here, the defendant established its prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff was unable to identify the cause of his fall (see *Capasso v Capasso*, 84 AD3d at 998; *Patrick v Costco Wholesale Corp.*, 77 AD3d at 811). In opposition, the plaintiff failed to raise a

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triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562-564; *McCord v Olympia & York Maiden Lane Co.*, 8 AD3d 634, 636).

Accordingly, the Supreme Court correctly granted the defendant's motion for summary judgment dismissing the complaint.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court