

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

D33356
N/prt

_____AD3d_____

Argued - November 3, 2011

DANIEL D. ANGIOLILLO, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-10938

DECISION & ORDER

Jeffrey G. McFarland, respondent, et al., plaintiff, v
American Oxygen Company, defendant, Tri-Weld
Industries, Inc., appellant (and a third-party action
and another title).

(Index Nos. 33474/06, 9603/07)

Cerussi & Spring, White Plains, N.Y. (Peter Riggs of counsel), for appellant.

Meyer, Suozzi, English & Klein, P.C., Garden City, N.Y. (Robert N. Zausmer of
counsel), for respondent.

In an action to recover damages for personal injuries, etc., the defendant Tri-Weld Industries, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Farneti, J.), entered October 21, 2010, as denied that branch of its motion which was for summary judgment dismissing the complaint insofar as asserted against it by the plaintiff Jeffrey G. McFarland.

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

The Supreme Court properly denied that branch of the motion of the defendant Tri-Weld Industries, Inc. (hereinafter Tri-Weld), which was for summary judgment dismissing the complaint insofar as asserted against it by the plaintiff Jeffrey G. McFarland. In response to Tri-Weld's prima facie showing of entitlement to judgment as a matter of law (*see Alvarez v Prospect*

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Hosp., 68 NY2d 320), McFarland raised a triable issue of fact through the submission of his expert's affidavit (*see Zuckerman v City of New York*, 49 NY2d 557).

ANGIOLILLO, J.P., HALL, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court