

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

D33527
O/kmb

_____AD3d_____

Argued - December 15, 2011

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2010-09872

DECISION & ORDER

Antonio Polanco, appellant, v Lewis Flushing Corp., defendant third-party plaintiff-respondent, et al., defendants; Accurate Speciality Metal Fabricators, Inc., third-party defendant.

(Index No. 7099/04)

Ross & Hill (Arnold E. DiJoseph, P.C., New York, N.Y. [Arnold E. DiJoseph III], of counsel), for appellant.

Barry, McTiernan & Moore, New York, N.Y. (Laurel A. Wedinger of counsel), for defendant third-party plaintiff-respondent.

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Joel Simon of counsel), for third-party defendant.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Ruchelsman, J.), dated September 7, 2010, as, upon renewal, adhered to so much of an original determination in an order of the same court dated January 13, 2010, as, upon, in effect, searching the record, awarded summary judgment to the defendant Lewis Flushing Corporation dismissing the complaint insofar as asserted against it.

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

As the plaintiff correctly concedes, the sole argument he raises on appeal was not

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advanced before the Supreme Court. Contrary to the plaintiff's contention, his argument does not present a pure question of law that could not have been avoided if raised at the proper juncture (*see Matter of Panetta v Carroll*, 62 AD3d 1010). Accordingly, his argument may not be reached for the first time on appeal (*see NYU Hosp. for Joint Diseases v Country Wide Ins. Co.*, 84 AD3d 1043, 1044; *Pekich v James E. Lawrence, Inc.*, 38 AD3d 632, 633).

MASTRO, A.P.J., ANGIOLILLO, BALKIN and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court