

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

D33751
O/kmb

_____AD3d_____

Argued - December 2, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2011-00995

DECISION & ORDER

Sera Eum, et al., respondents, v Charles
W.D. Stephens, et al., appellants.

(Index No. 30921/06)

Brand, Glick & Brand, P.C., Garden City, N.Y. (Robert S. Mazzuchin and Daniel A. Fried of counsel), for appellants.

Yohan Choi, Flushing, N.Y. (Susan R. Nudelman of counsel), for respondents.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (F. Rivera, J.), dated November 4, 2010, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On May 30, 2006, the plaintiffs were driving on the Long Island Expressway behind a roll-off dump truck owned by the defendant Arma Scrap Metal Co., Inc., and operated by the defendant Charles W.D. Stephens (hereinafter the defendant driver), when one of the tires on the truck blew out. Although the plaintiffs' vehicle did not make contact with the truck or any other vehicle, the plaintiffs alleged that they sustained injuries from, among other things, the impact of the rubber from the blown tire striking their car. Subsequently, the plaintiffs commenced this action against the defendants alleging that the accident was due to the defendants' negligent maintenance of the subject truck. After discovery, the defendants moved for summary judgment dismissing the complaint. The Supreme Court denied the motion. The defendants appeal and we affirm.

March 6, 2012

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The defendants failed to meet their prima facie burden of establishing their entitlement to judgment as a matter of law, as they failed to demonstrate that their maintenance of the truck's tires was reasonable under all of the circumstances (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Castro v Salem Truck Leasing, Inc.*, 63 AD3d 1095). Since the defendants failed to satisfy their prima facie burden, denial of their motion was required without regard to the sufficiency of the plaintiffs' opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the defendants' motion was properly denied.

ANGIOLILLO, J.P., DICKERSON, HALL and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court