

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

D33986
W/prt

_____AD3d_____

Submitted - January 23, 2012

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-08766

DECISION & ORDER

Noel Hernandez, appellant, v
Julio Tepan, respondent.

(Index No. 1184/11)

The Sullivan Law Firm, New York, N.Y. (James A. Domini and Timothy M. Sullivan of counsel), for appellant.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock 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 (Rothenberg, J.), dated August 18, 2011, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff failed to establish his prima facie entitlement to judgment as a matter of law on the issue of liability (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). As the defendant correctly contends, the police accident report submitted by the plaintiff in support of the plaintiff's motion for summary judgment on the issue of liability constituted inadmissible hearsay, since the report was not certified as a business record (*see CPLR 4518[a]; Johnson v Lutz*, 253 NY 124, 128; *Bailey v Reid*, 82 AD3d 809, 810; *see also Noakes v Rosa*, 54 AD3d 317, 318), and there is no indication that some other hearsay exception applied to the statements contained in the report (*see Bailey v Reid*, 82 AD3d at 810; *State Farm Mut. Auto. Ins. Co. v Langan*, 18 AD3d 860, 862-863; *see also Noakes v Rosa*, 54 AD3d at 318).

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Further, “[t]here can be more than one proximate cause of an accident” (*Cox v Nunez*, 23 AD3d 427, 427). Therefore, even if the defendant violated Vehicle and Traffic Law § 1143, as the plaintiff alleges, the plaintiff’s affidavit did not establish, as a matter of law, the plaintiff’s freedom from comparative negligence (*see Gardella v Esposito Foods, Inc.*, 80 AD3d 660).

The plaintiff’s remaining contention is without merit.

Accordingly, the Supreme Court properly denied the plaintiff’s motion for summary judgment on the issue of liability.

SKELOS, J.P., LEVENTHAL, LOTT and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court