

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

D34490  
O/kmb

\_\_\_\_AD3d\_\_\_\_

Argued - March 6, 2012

MARK C. DILLON, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
JEFFREY A. COHEN, JJ.

---

2011-04899

DECISION & ORDER

Alan Fong, et al., respondents, v Town of Montgomery,  
et al., appellants.

(Index No. 3623/10)

---

Drake, Loeb, Heller, Kennedy, Gogerty, Gaba & Rodd, PLLC (Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, N.Y. [Gregory A. Cascino], of counsel), for appellants.

Oshman & Mirisola, LLP, New York, N.Y. (David L. Kremen of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Orange County (Bartlett, J.), dated April 15, 2011, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint, as they failed to establish their prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557). The defendants failed to meet their prima facie burden of establishing the applicability of the so-called "rules of the road" exemption contained in Vehicle and Traffic Law § 1103(b) for emergency vehicles responding to a bona fide emergency and, therefore, were not entitled to the application of the "reckless disregard" standard of care (Vehicle and Traffic Law § 1103[b]; *see Hofmann v Town of Ashford*, 60 AD3d 1498; *Davis v Incorporated Vil. of Babylon, N.Y.*, 13 AD3d 331; *Marvin v Town of Middlesex*, 2002 NY Slip Op 50006[U] [2002], *affd* 300 AD2d 1112; *cf.*

April 17, 2012

Page 1.

*Riley v County of Broome*, 95 NY2d 455).

DILLON, J.P., ANGIOLILLO, BELEN and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court