

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

D34543
Y/kmb

_____AD3d_____

Submitted - March 8, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2011-06407

DECISION & ORDER

Alfredo Villa, appellant, v Katherine Leandrou,
respondent.

(Index No. 21759/10)

Charles Wisell, Jackson Heights, N.Y., for appellant.

Mendolia & Stenz (Cuomo, LLC, New York, N.Y. [Sherri A. Jayson], of counsel),
for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (McDonald, J.), dated June 2, 2011, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

As properly determined by the Supreme Court, the plaintiff failed to make a prima facie showing of entitlement to judgment as a matter of law (*see Thoma v Ronai*, 82 NY2d 736, 737; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The proof submitted by the plaintiff in support of his motion failed to establish, as a matter of law, that he was free from comparative negligence (*see Roman v Al Limousine, Inc.*, 76 AD3d 552; *McFadden v Bruno*, 37 AD3d 177; *Scibelli v Hopchick*, 27 AD3d 720; *Wallace v Dublin*, 20 AD3d 412; *Valore v McIntosh*, 8 AD3d 662; *Eastmond v Wen Po Wong*, 300 AD2d 344). The failure to make such a showing requires the denial of the plaintiff's motion for summary judgment, regardless of the sufficiency of the defendant's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on the issue of liability.

April 17, 2012

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RIVERA, J.P., CHAMBERS, ROMAN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court