

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

D35142
W/kmb

_____AD3d_____

Argued - April 20, 2012

WILLIAM F. MASTRO, A.P.J.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2011-05206

DECISION & ORDER

Mark Gatz, appellant, v Mark Layburn, respondent.

(Index No. 12558/02)

Arthur V. Graceck, Jr., Oakdale, N.Y., for appellant.

In an action to recover damages for assault and battery, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Spinner, J.), dated July 2, 2010, which, upon the granting of his motion for leave to enter a judgment in his favor on the issue of liability upon the defendant's default in appearing or answering, and after an inquest on the issue of damages, determined that the defendant owed no damages to him and directed dismissal of the complaint with prejudice.

ORDERED that on the Court's own motion, the notice of appeal from the order is deemed to be an application for leave to appeal from the order, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed, without costs or disbursements.

The Supreme Court correctly determined that the plaintiff failed to offer sufficient evidence to establish his entitlement to damages (*cf. Rodriguez v Valentine*, 20 AD3d 558, 559; *Laurie Marie M. v Jeffrey T.M.*, 159 AD2d 52, 55-56, *aff'd* 77 NY2d 981). Accordingly, the Supreme Court properly concluded that the plaintiff was not entitled to an award of damages, and properly directed dismissal of the complaint.

MASTRO, A.P.J., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

May 30, 2012

GATZ v LAYBURN