

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

D36624
W/hu

_____AD3d_____

Submitted - October 18, 2012

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-09963

DECISION & ORDER

Mario Figueroa, appellant, v City of New York,
defendant, New York City Transit Authority,
respondent (and third-party actions).

(Index No. 20116/08)

Trolman, Glaser & Lichtman, P.C., New York, N.Y. (Michael T. Altman of counsel),
for appellant.

Wallace D. Gossett, Brooklyn, N.Y. (Steven S. Efron of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Solomon, J.), entered September 21, 2011, which, upon the granting of the motion of the defendant New York City Transit Authority pursuant to CPLR 4401 for judgment as a matter of law, made at the close of evidence, is in favor of the defendant New York City Transit Authority and against him dismissing the complaint insofar as asserted against that defendant.

ORDERED that the judgment is affirmed, with costs.

To succeed on a motion for judgment as a matter of law pursuant to CPLR 4401, a defendant has the burden of showing that there is no rational process by which the jury could find in favor of the plaintiff and against the moving defendant (*see Szczerbiak v Pilat*, 90 NY2d 553, 556; *Ryan v New York City Tr. Auth.*, 89 AD3d 1005; *Magidenko v Consolidated Edison*, 3 AD3d 553). In determining whether the defendant has met this burden, a court must accept the plaintiff's evidence as true and accord the plaintiff the benefit of every reasonable inference which can reasonably be drawn from the evidence presented at trial (*see Szczerbiak v Pilat*, 90 NY2d at 556;

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FIGUEROA v CITY OF NEW YORK

Liounis v New York City Tr. Auth., 92 AD3d 643; *Velez v Goldenberg*, 29 AD3d 780, 781). Under the circumstances of this case, the motion of the defendant New York City Transit Authority (hereinafter the NYCTA) pursuant to CPLR 4401 was properly granted since the plaintiff, who had difficulty identifying the location of the subject accident, testified at trial that he did not know what had caused him to fall (*see Knudsen v Mamaroneck Post No. 90, Dept. of N.Y.-Am. Legion, Inc.*, 94 AD3d 1058; *Capasso v Capasso*, 84 AD3d 997; *Thompson v Commack Multiplex Cinemas*, 83 AD3d 929). Accordingly, the Supreme Court properly granted the NYCTA's motion.

DILLON, J.P., LEVENTHAL, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court