

# State of New York Court of Appeals

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This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 82 SSM 12

Mamidou Barry, &c.,  
Respondent,

v.

Christopher C. Lee, &c., et al.,  
Appellants.

Submitted by Judy C. Selmecci, for appellants.  
Submitted by Stanley A. Landers, for respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative. Plaintiff's submissions rebutted defendants' prima facie showing of entitlement to summary judgment and raised triable issues of fact. On this record, triable questions of fact preclude summary judgment in favor of defendants. Judges Rivera, Stein, Fahey, Wilson and Feinman concur. Chief Judge DiFiore and Judge Garcia dissent for reasons stated in the dissenting opinion of Justice Anil C. Singh at the Appellate Division (*see Barry v Lee*, 180 AD3d 103, 108-114 [2019] [Singh, J., dissenting]).

Decided September 1, 2020