

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND JUDICIAL DEPARTMENT**

Goris v. Preferred Freezer, Inc.

127 A.D.3d 1015 (N.Y. App. Div. 2015) · No. 2014-11133 · Decided April 22, 2015

SUMMARY

The New York Appellate Division, Second Department affirmed an order denying the plaintiff's motion for summary judgment on liability in a personal-injury action. The court held that the plaintiff failed to make a prima facie showing because the evidence presented triable issues concerning responsibility for detaching a loading platform and whether the plaintiff operated the pallet-moving scooter negligently. The court therefore affirmed the denial of summary judgment regardless of the sufficiency of the defendants' opposing papers.

OPINION

PER CURIAM.

Goris v Preferred Freezer, Inc. (2015 NY Slip Op 03318) Goris v Preferred Freezer, Inc. 2015 NY Slip Op 03318 Decided on April 22, 2015 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on April 22, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department RUTH C. BALKIN, J.P.

LEONARD B. AUSTIN SANDRA L. SGROI HECTOR D. LASALLE, JJ. 2014-11133 (Index No. 1824/13) [*1]Jorge Goris, appellant, vPreferred Freezer, Inc., et al., respondents. Robert K. Young and Associates, P.C., Merrick, N.Y. (Gary J. Young of counsel), for appellant. Lewis Johs Avallone Aviles, LLP, Islandia, N.Y. (Robert A. Lifson of counsel), for respondents. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Feinman, J.), entered September 19, 2014, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs. On December 6, 2012, the plaintiff, who was an employee of Restaurant Depot, located in Garden City, was operating a motorized pallet-moving scooter (hereinafter the scooter), when he fell from a loading dock.

The plaintiff claimed that he was backing the scooter onto a metal platform which bridged the gap between the loading dock and a tractor-trailer parked at the dock, when the driver of the tractor

pulled the trailer away, causing the plaintiff and the scooter to fall from the loading dock to the ground.

The plaintiff commenced this action against the owner and the operator of the tractor-trailer to recover damages for personal injuries. The plaintiff moved for summary judgment on the issue of liability. The Supreme Court denied the motion.

We affirm. The plaintiff failed to make a prima facie showing of entitlement to judgment as a matter of law, as he did not tender sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Zuckerman v City of New York*, 49 NY2d 557, 562; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404).

The plaintiff's moving papers, which included a transcript of the deposition testimony of both the plaintiff and the operator of the tractor-trailer, revealed the existence of triable issues of fact as to whose responsibility it was to detach the metal platform from the trailer, and, if it was the plaintiff's responsibility, whether his failure to do so contributed to the accident.

The plaintiff's submissions also revealed the existence of a triable issue of fact as to whether the plaintiff operated the scooter in a negligent manner and, if so, whether the plaintiff's negligence in this regard contributed to the accident.

The plaintiff's failure to make the requisite prima facie showing warranted the denial of his motion, regardless of the sufficiency of the opposing papers (see *Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Winegrad v New York Univ. Med. Ctr.*, 64 [*2]NY2d at 853).

Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on the issue of liability. BALKIN, J.P., AUSTIN, SGROI and LASALLE, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court