

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.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Ruth C. Balkin, J.P.; Leonard B. Austin, J.; Sandra L. Sgroi, J.; Hector D. LaSalle, J.
JURISDICTION	New York
DECIDED	April 22, 2015
DOCKET	2014-11133
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order denying his motion for summary judgment on liability in a personal-injury action arising from a loading-dock accident.
STANDARD OF REVIEW	The plaintiff had to make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact. Failure to make that showing required denial of the motion regardless of the sufficiency of the opposing papers.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Jorge Goris v. Preferred Freezer, Inc., Other defendants

TOPICS

summary judgment

standard of review

negligence

personal injury

appellate procedure

PRACTICE AREAS

civil procedure

personal injury

negligence

remedies

QUESTIONS PRESENTED

1. Whether the plaintiff established entitlement to summary judgment on liability by demonstrating the absence of any material issue of fact.
2. Whether the deposition evidence created triable issues concerning responsibility for detaching the metal platform and the plaintiff's allegedly negligent operation of the scooter.

HOLDINGS

1. The plaintiff was not entitled to summary judgment because he failed to make a prima facie showing that no material issue of fact existed.

FACTUAL BACKGROUND

On December 6, 2012, Jorge Goris, an employee of Restaurant Depot, was operating a motorized pallet-moving scooter at a Garden City loading dock. He claimed that, while backing the scooter onto a metal platform bridging the gap between the dock and a tractor-trailer, the tractor driver pulled the trailer away, causing him and the scooter to fall. The submissions raised factual questions about responsibility for detaching the platform and whether Goris operated the scooter negligently.

PROCEDURAL HISTORY

Jorge Goris sued the owner and operator of a tractor-trailer for personal injuries after falling from a loading dock. He moved for summary judgment on liability. The Supreme Court, Nassau County, denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324
- *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853
- *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562
- *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404