

Knox v Rose

Supreme Court of New York, Appellate Division, Second Department

January 13, 2021, Decided

2018-05773

Reporter

2021 N.Y. App. Div. LEXIS 150 *; 2021 NY Slip Op 00161 **; 2021 WL 115898

[1]** Daniel Knox, respondent, v Gary H. Rose, appellant. (Index No. 712023/16)

Notice: THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Core Terms

summary judgment, defense motion, conversion

Counsel: **[*1]** Lambert & Shackman, PLLC, New York, NY (Thomas C. Lambert of counsel), for appellant.

Judges: MARK C. DILLON, J.P., LEONARD B. AUSTIN, COLLEEN D. DUFFY, BETSY BARROS, JJ. DILLON, J.P., AUSTIN, DUFFY and BARROS, JJ., concur.

Opinion

DECISION & ORDER

In an action to recover damages for conversion and abuse of process, the defendant appeals from an order of the Supreme Court, Queens County (Pam Jackman Brown, J.), dated January 11, 2018. The order, insofar as appealed from, denied the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

In October 2016, the plaintiff commenced this action, inter alia, to recover damages for conversion after his vehicle was booted and then towed by the defendant, a New York City Marshal.

Under the circumstances of this case, although the defendant's failure to submit a copy of the pleadings with his motion for summary judgment did not require denial of the motion (see [CPLR 3212\[b\]](#); [Lombardi v Lombardi](#), 127 AD3d 1038, 1040, 7 N.Y.S.3d 447), the defendant failed to make a prima facie showing of his entitlement to summary judgment (see [UB Distributions, LLC v S.K.I. Wholesale Beer Corp.](#), 161 AD3d 1027, 1028, 76 N.Y.S.3d 608; [Parr Meadows Racing Assn. v White](#), 76 AD2d 858, 858).

The defendant's remaining contention is without merit.

Accordingly, we agree with the Supreme Court's determination **[*2]** to deny the defendant's motion, regardless of the sufficiency of the plaintiff's opposition papers (see [Winegrad v New York Univ. Med. Ctr.](#), 64 NY2d 851, 853, 476 N.E.2d 642, 487 N.Y.S.2d 316).

DILLON, J.P., AUSTIN, DUFFY and BARROS, JJ., concur.

End of Document