

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

D12593
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_____AD3d_____

Submitted - October 3, 2006

GABRIEL M. KRAUSMAN, J.P.
REINALDO E. RIVERA
ROBERT A. SPOLZINO
ROBERT A. LIFSON, JJ.

2006-05012

DECISION & ORDER

Gina-Marie Reitano, etc., respondents, v Linda
Nilsen, etc., et al., appellants.

(Index No. 11844/03)

Lifflander & Reich, LLP, New York, N.Y. (Kent B. Dolan of counsel), for appellants.

Carolyn M. Halk, Staten Island, N.Y. (Robert T. Campbell of counsel), for
respondents.

In an action, inter alia, to recover damages for intentional infliction of emotional distress, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Richmond County (Giacobbe, J.), dated April 21, 2006, as denied those branches of their motion which were for summary judgment dismissing the causes of action alleging intentional infliction of emotional distress, and the causes of action alleging vicarious liability based on the allegations of intentional infliction of emotional distress.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and those branches of the defendants' motion which were for summary judgment dismissing the causes of action alleging intentional infliction of emotional distress and the causes of action alleging vicarious liability based on the allegations of intentional infliction of emotional distress are granted.

The defendants made a prima facie showing of entitlement to judgment as a matter of law with respect to the causes of action to recover damages for intentional infliction of emotional distress. In opposition, the plaintiffs failed to raise a triable issue of fact (*see Howell v New York Post Co.*, 81 NY2d 115, 122; *Harper v Farensbach*, 8 AD3d 341, 341-342; *Nesenoff v Dinerstein &*

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Lesser, 5 AD3d 746, 748). Accordingly, the Supreme Court erred in denying those branches of the motion which were for summary judgment dismissing those causes of action, as well as the causes of action alleging vicarious liability based on the allegations of intentional infliction of emotional distress.

KRAUSMAN, J.P., RIVERA, SPOLZINO and LIFSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court