

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

D12743
C/nl

_____AD3d_____

Argued - October 10, 2006

THOMAS A. ADAMS, J.P.
REINALDO E. RIVERA
PETER B. SKELOS
ROBERT A. LIFSON, JJ.

2005-04647

DECISION & ORDER

Martin Mason, appellant, v Ben Roy Das, Inc.,
et al., respondents.

(Index No. 21452/02)

William T. Martin, Brooklyn, N.Y., for appellant.

Nicoletti, Gonson & Spinner, LLP, New York, N.Y. (Angela A. Lainhart of counsel),
for respondents.

In an action, inter alia, to recover damages for assault, the plaintiff appeals from an order of the Supreme Court, Kings County (Johnson, J.), dated March 31, 2005, which granted the defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was assaulted by an employee of the defendant Ben Roy Das, Inc. (hereinafter BRD), the owner of a gas station.

Contrary to the plaintiff's contentions, the complaint failed to state a cause of action to recover damages for negligent hiring. There is no allegation in the complaint to indicate that BRD knew or should have known of a propensity on the part of its employee to commit the alleged acts (*see Mataxas v North Shore Univ. Hosp.*, 211 AD2d 762,763). Moreover, there is no common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee (*see Kenneth R. v*

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Roman Catholic Diocese of Brooklyn, 229 AD2d 159, 163). Thus, the Supreme Court properly granted the defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

The plaintiff's remaining contentions are without merit.

ADAMS, J.P., RIVERA, SKELOS 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