

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

D13252
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_____AD3d_____

Submitted - November 29, 2006

ANITA R. FLORIO, J.P.
DAVID S. RITTER
GLORIA GOLDSTEIN
JOSEPH COVELLO, JJ.

2006-03423

DECISION & ORDER

Calogero Lamarca, appellant, v Super Structure Builders, Inc., et al., defendants, 31 W 21, LLC, respondent.

(Index No. 275/03)

Grey & Grey, LLP, Farmingdale, N.Y. (Sherman B. Kerner of counsel), for appellant.

McCabe, Collins, McGeough & Fowler, LLP, Carle Place, N.Y. (Patrick M. Murphy of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Kurtz, J.), dated February 22, 2006, as denied that branch of her motion which was to sever this action insofar as asserted against the defendant Super Structure Builders, Inc., and to permit the plaintiff to proceed against the defendant 31 W 21, LLC.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the circumstances, the Supreme Court providently exercised its discretion in denying that branch of the plaintiff's motion which was to sever this action insofar as asserted against the defendant Super Structure Builders, Inc., and to permit the plaintiff to proceed against the

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defendant 31 W 21, LLC (see CPLR 603; *Naylor v Knoll Farms of Suffolk County*, 31 AD3d 726, 727; *Ingoglia v Leshaj*, 1 AD3d 482, 485).

FLORIO, J.P., RITTER, GOLDSTEIN and COVELLO, 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