

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

D13353
O/mv

_____AD3d_____

Argued - November 28, 2006

HOWARD MILLER, J.P.
REINALDO E. RIVERA
PETER B. SKELOS
ROBERT J. LUNN, JJ.

2005-07826

DECISION & ORDER

Epifanio Almonte, appellant, v
Maria Tobias, et al., respondents.

(Index No. 47104/03)

Longo & D'Apice, Brooklyn, N.Y. (Mark A. Longo of counsel), for appellant.

Corigliano, Geiger, Verill, McEnaney & Brandwein, Jericho, N.Y. (Kathleen M. Geiger and Charles M. Geiger of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (F. Rivera, J.), dated July 15, 2005, which granted that branch of the defendants' motion which was for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendants made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that the plaintiff violated Vehicle and Traffic Law § 1141 when he made a left turn directly into the path of the vehicle driven by the defendant Rudolph Hill. The plaintiff was negligent in failing to see that which, under the circumstances, he should have seen, and in crossing in front of the defendants' vehicle when it was hazardous to do so (*see Salce v Check*, 23 AD3d 451; *Moreback v Mesquita*, 17 AD3d 420; *Torro v Schiller*, 8 AD3d 364; *Russo v Scibetti*, 298 AD2d 514; *Stiles v County of Dutchess*, 278 AD2d 304). Furthermore, since Hill had the right of way, he was entitled to anticipate that the plaintiff would obey traffic laws which required him to yield (*see Stiles v County of Dutchess, supra*). In opposition, the plaintiff failed to submit evidence sufficient

to raise a triable issue of fact. Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the complaint.

MILLER, J.P., RIVERA, SKELOS and LUNN, 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