

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

D14028
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_____AD3d_____

Argued- January 19, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2005-11533

DECISION & ORDER

Muriel Oben, respondent, v Charmer Industries, Inc.,
appellant, et al., defendant.

(Index No. 2305/05)

Robin, Harris, King, Yuhas, Fodera & Richman, New York, N.Y. (Jeffrey L. Richman
of counsel), for appellant.

Burns & Harris, New York, N.Y. (David M. Freeman of counsel), for respondent.

In an action to recover damages, in effect, for negligence, the defendant Charmer Industries, Inc., appeals from an order of the Supreme Court, Queens County (O'Donoghue, J.), dated October 3, 2005, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is reversed, with costs, and the motion of the defendant Charmer Industries, Inc., for summary judgment dismissing the complaint insofar as asserted against it is granted.

“While an intentional tort may give rise to a cause of action outside the ambit of the Workers’ Compensation Law, the complaint must allege ‘an intentional or deliberate act by the employer directed at causing harm to this particular employee’” (*McNally v Posterloid Corp.*, 15 AD3d 456, 457, quoting *Myloie v GAF Corp.*, 81 AD2d 994, 995, *affd* 55 NY2d 893). The plaintiff’s allegations failed to establish the elements of an intentional tort so as to fall under this

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exception to the exclusivity provision of Workers' Compensation Law § 29 (*see McNally v Posterloid Corp., supra; Fucile v Grand Union Co., 270 AD2d 227, 228; Edgarian v Boxart, Inc., 237 AD2d 484*). Accordingly, the Supreme Court should have granted the motion of the defendant Charmer Industries, Inc., for summary judgment dismissing the complaint insofar as asserted against it.

SCHMIDT, J.P., RIVERA, COVELLO and BALKIN, 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