

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

D14348
G/mv

_____AD3d_____

Submitted - February 9, 2007

STEPHEN G. CRANE, J.P.
ANITA R. FLORIO
STEVEN W. FISHER
THOMAS A. DICKERSON, JJ.

2006-04369

DECISION & ORDER

Calixto Guerra, respondent, v Guido Cantos,
d/b/a Guido Auto Cars, et al., appellants.

(Index No. 25103/04)

Kral Clerkin Redmond Ryan Perry & Girvan, LLP, Smithtown, N.Y. (James V. Derenze of counsel), for appellants.

Michael T. Ridge, Bronx, N.Y. (Elizabeth Anne Bannon of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Saitta, J.), dated March 28, 2006, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendants failed to submit evidence sufficient to establish their prima facie entitlement to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851). The parties gave conflicting deposition testimony as to how the accident occurred. Viewing the evidence in the light most favorable to the plaintiff, as we must (*see Makaj v Metropolitan Transp. Auth.*, 18 AD3d 625, 626), we find that a triable issue of fact exists as to whether the defendant driver cut in front of the plaintiff without signaling and contributed to this rear-end collision (*see Briceno v Milbry*, 16 AD3d 448, 448-449; *Mohan v Puthumana*, 302 AD2d 437; *Rozengauz v*

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Lok Wing Ha, 280 AD2d 534, 535; *Green v Hong Lee Trading*, 263 AD2d 445). Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint.

CRANE, J.P., FLORIO, FISHER and DICKERSON, 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