

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

D14578
X/gts

_____AD3d_____

Argued - March 2, 2007

FRED T. SANTUCCI, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2006-05401

DECISION & ORDER

Dorothy Hopkins, etc., et al., appellants, v
Carol P. Haber, et al., respondents.

(Index No. 11008/05)

Mirman, Markovits & Landau, P.C., New York, N.Y. (Ephrem Wertenteil of counsel), for appellants.

Composto & Composto, Brooklyn, N.Y. (Judith Nocella of counsel), for respondent Carol P. Haber.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Joseph A. H. McGovern and John D. Morio of counsel), for respondent VW Credit Leasing, Ltd.

In an action, inter alia, to recover damages for wrongful death, the plaintiffs appeal from an order of the Supreme Court, Kings County (Demarest, J.), dated May 18, 2006, which denied their motion for summary judgment on the issue of liability.

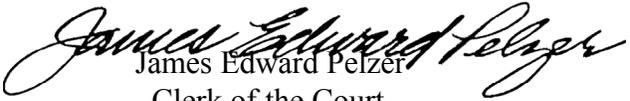
ORDERED that the order is affirmed, with costs.

The plaintiffs failed to establish, prima facie, that the defendant driver's alleged negligence in the operation of her vehicle was the sole proximate cause of the accident (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851). Here, a triable issue of fact exists as to whether the

plaintiffs' decedent was crossing the street within the crosswalk and whether she contributed to the cause of the accident (*see* Vehicle and Traffic Law § 1152[a]; *Parinello v Davis*, 2 AD3d 610; *Dragunova v Dondero*, 305 AD2d 449; *Ruocco v Mulhall*, 281 AD2d 406). Accordingly, the Supreme Court properly denied the plaintiffs' motion for summary judgment on the issue of liability.

SANTUCCI, J.P., KRAUSMAN, LIFSON and DILLON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court