

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

D16449
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_____AD3d_____

Argued - September 4, 2007

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
MARK C. DILLON
THOMAS A. DICKERSON, JJ.

2006-11612

DECISION & ORDER

Jeremy Kuri, etc., et al., respondents, v Shishir
Bhattacharya, etc., appellant.

(Index No. 1510/04)

Pilkington & Leggett, P.C., White Plains, N.Y. (Michael N. Romano of counsel), for
appellant.

Chiera & Associates, Eastchester, N.Y. (Randall J. Chiera of counsel), for
respondents.

In an action to recover damages for medical malpractice, etc., the defendant appeals
from an order of the Supreme Court, Westchester County (Bellantoni, J.), entered November 21,
2006, which denied his motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

“The proponent of a summary judgment motion must make a prima facie showing of
entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material
issues of fact . . . Failure to make such showing requires denial of the motion, regardless of the
sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *see*
Alvarez v Prospect Hosp., 68 NY2d 320). The defendant did not meet this burden since the
conclusory statements set forth in the affirmation of his medical expert did not refute, or even
address, the specific factual allegations of negligence made in the complaint and the original and
supplemental bills of particulars (*see Berkey v Emma*, 291 AD2d 517; *Drago v King*, 283 AD2d 603,
604; *Allen v Blum*, 212 AD2d 562; *Indelicato v Wyckoff Hgts. Hosp.*, 205 AD2d 664). The

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defendant's motion for summary judgment was therefore properly denied regardless of the sufficiency of the plaintiffs' opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).

SPOLZINO, J.P., RITTER, DILLON 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