

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

D16574
X/cb

_____AD3d_____

Argued - October 1, 2007

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2007-01991

DECISION & ORDER

Maria Martinez, etc., plaintiff v Ashley Apts Co., LLC,
et al., defendants third-party plaintiffs-respondents;
P & G Construction Corp., third-party defendant-
appellant.

(Index No. 32487/05)

Keller, O'Reilly & Watson, P.C., Woodbury, N.Y. (Patrick J. Engle of counsel), for
third-party defendant-appellant.

Greater New York Mutual Insurance Company, New York, N.Y. (Thomas D.
Hughes, Richard C. Rubenstein, and David D. Hess of counsel), for defendants third-
party plaintiffs-respondents.

In an action, inter alia, to recover damages for personal injuries, the third-party
defendant appeals from an order of the Supreme Court, Kings County (Kramer, J.), dated January
8, 2007, which denied its motion for summary judgment dismissing the third-party cause of action
for contractual indemnification.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, since discovery has not been conducted, it would
have been premature to grant summary judgment (*see Sportiello v City of New York*, 6 AD3d 421,
422). Moreover, as noted by the Supreme Court, the “conflicting self serving affidavits submitted
by the representatives of the respective parties” preclude the granting of summary judgment at this

October 16, 2007

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juncture (see *Comerica Bank N.A. v Benedict*, 39 AD3d 456, 458; *Thibeault v Travelers Ins. Co.*, 37 AD3d 1000, 1001; *Dune Deck Owners Corp. v Liggett*, 34 AD3d 523, 524).

MILLER, J.P., GOLDSTEIN, SKELOS and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer
Clerk of the Court