

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

D16666  
X/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 4, 2007

REINALDO E. RIVERA, J.P.  
GABRIEL M. KRAUSMAN  
ANITA R. FLORIO  
MARK C. DILLON, JJ.

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2006-11904

DECISION & ORDER

Joel Parnes, etc., respondent, v Mitzy Transportation,  
et al., appellants.

(Index No. 7371/06)

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Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for appellants.

Subin Associates, LLP, New York, N.Y. (Brooke Lombardi 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 (Knipel, J.), dated November 15, 2006, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion for summary judgment on the issue of liability is denied.

The plaintiff failed to establish his prima facie entitlement to judgment as a matter of law. Therefore, the Supreme Court should have denied his motion for summary judgment on the issue of liability (*see Thoma v Ronai*, 82 NY2d 736, 737; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851). The affidavits and the police accident report submitted by the plaintiff in support of his motion raised a triable issue of fact as to how the accident occurred, and failed to demonstrate as a matter of law that the plaintiff was free from liability (*see Larsen v Spano*, 35 AD3d 820, 821; *Judice v DeAngelo*, 272 AD2d 583). Since the plaintiff failed to meet his initial burden as the movant, we

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need not review the sufficiency of the defendants' opposition papers.

RIVERA, J.P., KRAUSMAN, FLORIO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court