

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

D17083
Y/kmg

_____AD3d_____

Argued - October 31, 2007

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-00754

DECISION & ORDER

Larry Koslow, et al., appellants, v
Zenith Electronics Corporation, respondent.

(Index No. 013296/00)

Gennet, Kallmann, Antin & Robinson, P.C., New York, N.Y. (Mark L. Antin of counsel), for appellants.

Canter Law Firm, P.C., White Plains, N.Y. (Nelson E. Canter of counsel), for respondent.

In an action to recover damages based on strict products liability, the plaintiffs appeal from an order of the Supreme Court, Nassau County (O'Connell, J.), dated December 22, 2005, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is denied.

The Supreme Court erred in granting the defendant's motion for summary judgment, as the defendant failed to meet its initial burden of establishing its prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Specifically, the defendant failed to establish that the subject product performed as intended or that there existed a likely cause of the accident not attributable to any defect in the design or manufacturing of the product (*see Speller v Sears, Roebuck & Co.*, 100 NY2d 38, 41; *D'Auguste v Shanty Hollow Corp.*, 26 AD3d 403, 404-405; *Milazzo v Premium Tech. Serv. Corp.*, 7 AD3d 586, 588). As the defendant failed to

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establish its prima facie entitlement to judgment as a matter of law, we need not consider the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

PRUDENTI, P.J., FISHER, CARNI and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court