

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

D17237
C/kmg

_____AD3d_____

Argued - November 8, 2007

GLORIA GOLDSTEIN, J.P.
STEVEN W. FISHER
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-06019

DECISION & ORDER

Patrick W. McArthur, etc., respondent, v A. Waalee
Muhammad, et al., defendants, County of Suffolk,
appellant.

(Index No. 15386/01)

Christine Malafi, County Attorney, Hauppauge, N.Y. (Christopher A. Jeffreys and
Kelly Green of counsel), for appellant.

Lite & Russell, West Islip, N.Y. (Justin N. Lite of counsel), for respondent.

In an action to recover damages for personal injuries and wrongful death, the defendant County of Suffolk appeals from an order of the Supreme Court, Suffolk County (Hudson, J.), dated April 26, 2007, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The plaintiff's decedent was involved in an automobile accident at the intersection of Crooked Hill Road and McNair Street in Islip. The plaintiff claims, inter alia, that the defendant County of Suffolk was negligent in its traffic planning decisions regarding the subject intersection.

The matter is before us on a motion by the County for summary judgment dismissing the complaint insofar as against it on the ground of qualified immunity. The County failed, however, to tender copies of any of the traffic studies on which it allegedly relied in making its traffic planning decisions for the subject intersection. Since it was unable to demonstrate the adequacy of those

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studies (*see Scott v City of New York*, 16 AD3d 485), the County therefore failed to establish its prima facie entitlement to judgment as a matter of law (*see Ayotte v Gervasio*, 81 NY2d 1062; *McArthur v Muhammad*, 27 AD3d 532).

In light of our determination, we need not reach the parties' remaining contentions.

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

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court