

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

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_____AD3d_____

Argued - November 26, 2007

HOWARD MILLER, J.P.
STEPHEN G. CRANE
MARK C. DILLON
RUTH C. BALKIN, JJ.

2006-09341

DECISION & ORDER

Lisa Montesinos, et al., appellants, v Alan
D. Cote, Jr., et al., respondents. (and another title)

(Index No. 3192/03)

Bailly and McMillan, LLP, White Plains, N.Y. (Katharine G. Hall of counsel), for appellants.

Billig Law, P.C., New York, N.Y. (Suzanne M. Billig of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from a judgment of the Supreme Court, Westchester County (Murphy, J.), entered July 28, 2006, which, upon an order of the same court entered May 9, 2006, granting the defendants' motion for summary judgment dismissing the complaint, dismissed the complaint.

ORDERED that the judgment is affirmed, with costs.

The plaintiff Lisa Montesinos (hereinafter the injured plaintiff), allegedly sustained serious injuries when she attempted to exit her vehicle and the driver's door of her car made contact with the trailer portion of a tractor-trailer owned by the defendant R & L Transfer and operated by the defendant Alan D. Cote, Jr. (hereinafter the defendants).

The evidence which the defendants submitted in support of their motion for summary judgment established their prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). The evidence established that the injured plaintiff violated Vehicle and Traffic Law § 1214 by opening the door on the side of her car adjacent to moving traffic when

December 18, 2007

Page 1.

MONTESINOS v COTE

it was not reasonably safe to do so, and was negligent in failing to see what, by the reasonable use of her senses, she should have seen (*see Williams v Persaud*, 19 AD3d 686). The evidence which the plaintiffs submitted in opposition to the motion failed to raise a triable issue of fact (*see* CPLR 3212[b]).

MILLER, J.P., CRANE, DILLON 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, sweeping initial "J".

James Edward Pelzer
Clerk of the Court