

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

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_____AD3d_____

Argued - January 22, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2007-02499

DECISION & ORDER

Rafael Villanueva, et al., respondents, v
Professional Environmental Systems, Inc.,
appellant.

(Index No. 48203/03)

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Paul M. Tarr and Harry Steinberg of counsel), for appellant.

Wingate, Russotti & Shapiro, LLP, New York, N.Y. (Scott A. Stern of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Johnson, J.), dated March 1, 2007, as denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The injured plaintiff allegedly was struck by a sheet of loose plywood while inspecting the roof of his employer's building. Pursuant to a contract with the injured plaintiff's employer, the defendant had been replacing heating, ventilation, and air conditioning units on the roof of the building, and it had left various materials, including plywood, on the roof of the building. The injured plaintiff alleged that heavy wind was blowing on the day of the accident.

The defendant failed to establish, prima facie, its entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). Triable issues of fact exist, inter alia, as to

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whether the defendant adequately secured its equipment. Since the defendant never met its initial burden as the movant, we need not review the sufficiency of the plaintiffs' opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and CARNI, 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