

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

D18289
G/kmg

_____AD3d_____

Argued - February 15, 2008

HOWARD MILLER, J.P.
JOSEPH COVELLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-00856
2007-05976

DECISION & ORDER

Marco Julio Enriquez, respondent, v Home Lawn
Care and Landscaping, Inc., et al., appellants,
et al., defendants.

(Index No. 05636/05)

D'Ambrosio & D'Ambrosio, P.C., Irvington, N.Y. (John P. D'Ambrosio and James
J. D'Ambrosio of counsel), for appellants.

Davidson & Cohen, Rockville Centre, N.Y. (Janet L.H. Smitelli of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants Home Lawn Care and Landscaping, Inc., and James Egloff appeal (1), as limited by their brief, from so much of an order of the Supreme Court, Westchester County (Jamieson, J.), entered December 20, 2006, as granted the plaintiff's motion pursuant to CPLR 3025(b) for leave to amend the complaint to add James Egloff as a party defendant, and (2) from an order of the same court (Giacomo, J.), entered June 5, 2007, which denied that branch of the motion of the defendant James Egloff which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against him for failure to state a cause of action, and denied, as premature, that branch of the motion of the defendant James Egloff which was for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the appeals by the defendant Home Lawn Care and Landscaping, Inc., are dismissed, as that defendant is not aggrieved by the orders appealed from (*see* CPLR 5511); and it is further,

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ORDERED that the order entered December 20, 2006, is affirmed insofar as appealed from by the defendant James Egloff; and it is further,

ORDERED that the order entered June 5, 2007, is affirmed insofar as appealed from by the defendant James Egloff; and it is further,

ORDERED that the plaintiff is awarded one bill of costs, payable by the appellants.

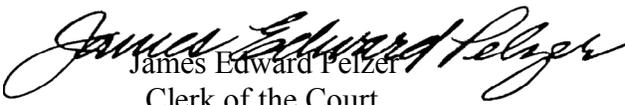
Contrary to the contention of the defendant James Egloff, the Supreme Court properly granted the plaintiff's motion for leave to amend the complaint to add him to the action as a party defendant, since the plaintiff alleged facts which, if proven true, could subject Egloff to personal liability for the plaintiff's injuries (*see generally* CPLR 1001 [a]; *City of New York v Long Is. Airports Limousine Serv. Corp.*, 48 NY2d 469, 475; *Bay Ridge Lumber Co. v Groenendaal*, 175 AD2d 94).

Similarly, the court properly denied that branch of Egloff's motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against him for failure to state a cause of action. Assuming the truth of the allegations and construing them liberally in favor of the plaintiff (*see Nonnon v City of New York*, 9 NY3d 825; *AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 5 NY3d 582, 591; *Leon v Martinez*, 84 NY2d 83; *Palo v Cronin & Byczek, LLP*, 43 AD3d 1127), the complaint adequately states a cause of action against Egloff in his individual capacity.

Finally, that branch of Egloff's motion which was for summary judgment dismissing the complaint insofar as asserted against him was properly denied as premature, since the motion was made prior to the joinder of issue by Egloff (*see* CPLR 3212[a]; *City of Rochester v Chiarella*, 65 NY2d 92, 101; *Sonny Boy Realty, Inc. v City of New York*, 8 AD3d 171, *affd* 4 NY3d 858; *Chakir v Dime Sav. Bank of N.Y.*, 234 AD2d 577, 578).

MILLER, J.P., COVELLO, ENG and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court