

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

D18374
Y/hu

_____AD3d_____

Argued - February 8, 2008

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-00950

DECISION & ORDER

Gregory J. Agati, respondent, v Fredrika Wandel,
appellant.
(Acton No. 1)

Fredrika Wandel, plaintiff, v Gregory J. Agati,
defendant.
(Acton No. 2)

(Index Nos. 20168/04, 38181/05)

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum and Brian Isaac] of counsel), for appellant.

Reingold & Tucker, Brooklyn, N.Y. (Jordan W. Tucker of counsel), for respondent.

In related actions to recover damages for personal injuries, the defendant in Action No. 1 appeals from so much of an order of the Supreme Court, Kings County (Balter, J.), dated November 20, 2006, as granted that branch of the motion of the plaintiff in that action which was for summary judgment on the issue of liability in that action.

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

The plaintiff in Action No. 1 made a prima facie showing of entitlement to judgment as a matter of law by presenting evidence which demonstrated that the sole proximate cause of the accident in question was the failure of the defendant in that action to yield the right-of-way as

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required by Vehicle & Traffic Law § 1141 (*see e.g. Spivak v Erickson*, 40 AD3d 962; *Aristizabal v Aristizabal*, 37 AD3d 503). In opposition, that defendant failed to come forward with any evidence sufficient to raise a triable issue of fact (*see e.g. Almonte v Tobias*, 36 AD3d 636; *Berner v Koegel*, 31 AD3d 591). Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability in Action No. 1.

MASTRO, J.P., COVELLO, ENG and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court