

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

D18425
Y/kmg

_____AD3d_____

Argued - February 7, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-03005

DECISION & ORDER

Chaim Shlome Jakobovics, etc., et al., appellants,
v Joseph Rosenberg, respondent.

(Index No. 27355/05)

Lester B. Herzog, Brooklyn, N.Y., for appellants.

Robin, Harris, King, Fodera & Richman, New York, N.Y. (Philip J. DeBernardis of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated January 31, 2007, as denied that branch of their motion which was for summary judgment on the issue of liability.

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

The infant plaintiff sustained personal injuries when he was struck by the defendant's motor vehicle when the defendant was backing out of his driveway. After commencing this action, the plaintiff mother of the infant plaintiff moved, on their behalf, inter alia, for summary judgment on the issue of liability. The evidence submitted in support of the motion, consisting, inter alia, of the defendant's deposition testimony in which he testified that he was proceeding at less than five miles per hour, looking in all of the car's mirrors and looking backward, as he backed the vehicle out of the driveway, failed to establish a prima facie showing of entitlement to judgment as a matter of law

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(see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). “Failure to make such prima facie showing requires a denial” of that branch of the motion which was for summary judgment on the issue of liability, “regardless of the sufficiency of the opposing papers” (*id.* at 324).

FISHER, J.P., MILLER, McCARTHY and CHAMBERS, 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