

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

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_____AD3d_____

Argued - April 7, 2008

ROBERT A. SPOLZINO, J.P.
RUTH C. BALKIN
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-00540

DECISION & ORDER

Ray Canwei Chen, appellant, v Century Motor
Leasing, Inc., et al., respondents.

(Index No. 14699/04)

Peter S. Delman (Huttner, Berson & Budashewitz, P.C., New York, N.Y. [Jeffrey A. Berson], of counsel), for appellant.

Robin, Harris, King & Fodera (Mauro Goldberg & Lilling, LLP, Great Neck, N.Y. [Deborah F. Peters], of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Bayne, J.), entered December 12, 2006, which, upon a jury verdict on the issue of liability, is in favor of the defendants and against him, in effect, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiff's contentions, under the facts of this case, the trial court did not err in refusing to charge the jury on provisions of Vehicle and Traffic Law § 1163(e) and Federal Motor Carrier Safety Regulation, 49 CFR 392.22 (*see Koperda v Town of Whitestown*, 224 AD2d 944). Even if the jury found that the defendants violated either provision, no reasonable view of the evidence could support the conclusion that such violation was a proximate cause of the accident (*see Farino v Cassiere*, 260 AD2d 534; *Cranston v Oxford Resources Corp.*, 173 AD2d 757, 759; *cf. Rivera v Americo*, 9 AD3d 356, 357).

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Additionally, the court did not err in charging the jury on the emergency doctrine (*see Rivera v New York City Tr. Auth.*, 77 NY2d 322, 326-327). Viewing the evidence, as we must, in the light most favorable to the party requesting the charge, we conclude that there is a reasonable view of the evidence that the defendant Jerome L. Rodriguez was faced with an emergency situation (*see Rivera v New York City Tr. Auth.*, 77 NY2d at 326-327; *Vitale v Levine*, 44 AD3d 935; *Fusco v Hobbes*, 16 AD3d 1031, 1032; *cf. Caristo v Sanzone*, 96 NY2d 172, 174-175).

SPOLZINO, J.P., BALKIN, DICKERSON 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