

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

D19246
X/kmg

____AD3d____

Argued - April 14, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2007-06651

DECISION & ORDER

Frank Iozzo, appellant, v
Westchester Country Club, respondent.

(Index No. 19688/04)

Joseph P. Kirley, White Plains, N.Y., for appellant.

Eustace & Marquez, P.C., White Plains, N.Y. (Diane C. Miceli of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from so much of an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered June 20, 2007, as granted the defendant's motion for summary judgment dismissing the complaint.

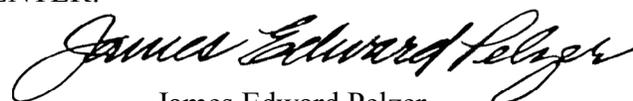
ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendant established its entitlement to judgment as a matter of law by demonstrating that the plaintiff, who acknowledged that he was aware of the dangers associated with riding on the back of an overcrowded golf cart, assumed the risk of injury when he chose to ride on the golf cart in the manner in which he did (*see Shaw v Lieb*, 40 AD3d 740, 741; *cf. Conroy v Marmon Enters.*, 253 AD2d 839, 840). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

The plaintiff's remaining contentions are without merit.

FISHER, J.P., COVELLO, ANGIOLILLO and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

July 29, 2008

IOZZO v WESTCHESTER COUNTRY CLUB