

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

D19554
X/prt

_____AD3d_____

Submitted - May 14, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-10563

DECISION & ORDER

Vladimir Voskin, appellant,
v Isaac Lemel, respondent.

(Index No. 161/07)

Wittenstein & Associates, P.C., Brooklyn, N.Y. (Harlan Wittenstein of counsel), for appellant.

Richard T. Lau, Jericho, N.Y. (Gene W. Wiggins of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Bunyan, J.), dated October 17, 2007, which denied his motion for summary judgment on the issue of liability with leave to renew after the depositions of the parties.

ORDERED that the order is reversed, on the law and the facts, with costs, and the plaintiff's motion for summary judgment on the issue of liability is granted.

In this case involving an accident between a motor vehicle and a pedestrian, the plaintiff established his prima facie entitlement to summary judgment in his favor by demonstrating that the defendant motorist was negligent in failing to yield the right of way to him while he was crossing a street, within the crosswalk, with the pedestrian "WALK" signal in his favor (*see Zabusky v Cochran*, 234 AD2d 542; *Jermin v APA Truck Leasing Co.*, 237 AD2d 255). The plaintiff's case was buttressed by the certified copy of the police accident report containing the defendant's admission that he did not see the plaintiff and struck him (*see Niyazov v Bradford*, 13 AD3d 501; *Vaden v Rose*, 4 AD3d 468; *Kemenyash v McGoey*, 306 AD2d 516; *Guevara v Zaharakis*, 303 AD2d

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555). The defendant did not deny that the plaintiff was within the crosswalk and had the light signal in his favor at the time of the accident. The defendant's affidavit in opposition was insufficient to defeat the motion for summary judgment (*see Capraro v Staten Is. Univ. Hosp.*, 245 AD2d 256; *Miller v City of New York*, 214 AD2d 657; *Garvin v Rosenberg*, 204 AD2d 388), and the defendant failed to demonstrate that further discovery was warranted (*see Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760).

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court