

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

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_____AD3d_____

Argued - May 5, 2008

FRED T. SANTUCCI, J.P.
JOSEPH COVELLO
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2007-04007

DECISION & ORDER

Luis Armijo, respondent, v
George A. Mitchell Co., appellant.

(Index No. 3619/05)

Goldberg Segalla, LLP, White Plains, N.Y. (Brian T. Stapleton and Matthew S. Lerner of counsel), for appellant.

James P. Harris, Goshen, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Orange County (Horowitz, J.), dated March 28, 2007, as denied its motion for summary judgment dismissing the complaint.

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

The Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint, which asserted causes of action based on strict products liability and negligence. The defendant manufacturer failed to establish, prima facie, that it did not design or manufacture an unreasonably dangerous product or that the purchaser's post-manufacture modifications to the product rendered the product unreasonably dangerous and thereby divested it of any potential liability (*see Liriano v Hobart Corp.*, 92 NY2d 232). Accordingly, the defendant failed to establish its prima facie entitlement to judgment as a matter of law, and the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint, regardless of the adequacy of the plaintiff's opposing papers.

July 8, 2008

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The defendant's remaining contentions are without merit.

SANTUCCI, J.P., COVELLO, BELEN and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court