

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

D20556  
O/kmg

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Argued - September 8, 2008

REINALDO E. RIVERA, J.P.  
HOWARD MILLER  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS, JJ.

2007-03512

DECISION & ORDER

Bienvenito Marte Ozoria, appellant,  
v Acculift, Inc., et al., respondents.

(Index No. 14485/04)

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Ginsberg & Broome, P.C., New York, N.Y. (Robert M. Ginsberg of counsel), for appellant.

Strongin Rothman & Abrams, LLP, New York, N.Y. (Annette G. Hasapidis and Howard F. Strongin of counsel), for respondents.

In an action to recover damages for personal injuries on a theory of strict products liability, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Agate, J.), entered March 14, 2007, which, upon a jury verdict, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the plaintiff's request to read into the record the deposition testimony of a witness he claimed was unavailable. The plaintiff failed to demonstrate that he made diligent efforts to locate the witness, and the proffered testimony was, in any event, irrelevant (*see* CPLR 3117[a][3]; *Nedball v Tellefsen*, 102 Misc 2d 589, 591; *see also Daughtery v City of New York*, 137 AD2d 441, 445).

Contrary to the plaintiff's contention, the jury's verdict was not internally inconsistent (*see O'Donnell v Calderon*, 293 AD2d 457, 457-458).

October 7, 2008

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The plaintiff's remaining contentions are without merit.

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court