

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

D21034
G/kmg

_____AD3d_____

Argued - October 14, 2008

ROBERT A. LIFSON, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-06306

DECISION & ORDER

Janine Donohue, appellant, v L. DeLea & Sons, Inc.,
et al., defendants, DeLea Leasing Corp., et al.,
respondents.

(Index No. 20348/03)

John L. Juliano, P.C., East Northport, N.Y. (Jonathan C. Juliano of counsel), for
appellant.

Mazzara & Small, P.C., Hauppauge, N.Y. (Timothy F. Mazzara of counsel), for
respondents.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County (R. Doyle, J.), entered June 6, 2007, as granted that branch of the motion of the defendants DeLea Leasing Corp., East Northport Equipment Corp., DeLea Landscaping Supplies, Inc., and DeLea Sod Farms, which was for summary judgment dismissing the complaint insofar as asserted against the defendant DeLea Leasing Corp. and denied her cross motion, among other things, for summary judgment on the issue of liability against the defendant DeLea Leasing Corp.

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

The plaintiff allegedly was injured while operating a truck in the course of her employment. The truck was leased to the plaintiff's employer by the defendant DeLea Leasing Corp. (hereinafter the owner). The plaintiff commenced this action against, among others, her employer and the owner. The Supreme Court granted the employer's motion to dismiss the complaint insofar

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as asserted against it, based on the exclusivity of the Workers' Compensation Law. The complaint asserts, in pertinent part, that the owner negligently failed to inspect, maintain, and repair the truck. The owner established its prima facie entitlement to judgment as a matter of law by demonstrating, inter alia, that it was not responsible for the maintenance and repair of the truck, and the plaintiff failed to raise a triable issue of fact in opposition (*see Delio v Percom Equip. Rental Corp.*, 249 AD2d 354, 354-355; *Jaglall v Supreme Petroleum Co. of N.J.*, 185 AD2d 971; *see also Rodriguez v Lodato Rental*, 267 AD2d 293). Accordingly, the Supreme Court properly awarded the owner summary judgment dismissing the complaint insofar as asserted against it.

In light of our determination, the plaintiff's remaining contentions have been rendered academic.

LIFSON, J.P., SANTUCCI, BALKIN and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court