

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

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Submitted - October 3, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-06105

DECISION & ORDER

Michelle Smith, respondent, v Town of Brookhaven,
appellant.

(Index No. 8811/03)

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),
for appellant.

Ferro, Kuba, Mangano, Sklyar, Gacovino & Lake, P.C., Hauppauge, N.Y. (Claudia
L. Behmoiran of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from so much of an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated June 7, 2007, as denied that branch of its motion which was for summary judgment dismissing so much of the complaint as alleged negligent design and/or construction of a roadway and failure to post warning signs.

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

The Supreme Court properly denied that branch of the motion of the defendant, Town of Brookhaven, which was for summary judgment dismissing so much of the complaint as alleged negligent design and/or construction of the roadway on which the plaintiff was traveling when she was involved in a motor vehicle accident, and the failure to place warning signs, since the Town did not meet its initial burden of establishing entitlement to judgment as a matter of law with respect to those claims (*see Hepburn v Croce*, 295 AD2d 475, 477; *Meyer v Town of Brookhaven*, 204 AD2d

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699, 700; *Bailey v Honda Motor Co.*, 144 AD2d 119, 121; *cf. Schleuter v Town of Brookhaven*, 304 AD2d 641, 642). The Town's failure to do so required the denial of that branch of its motion regardless of the sufficiency of the plaintiff's opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

MASTRO, J.P., SKELOS, BALKIN and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court