

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

D21397
C/hu

_____AD3d_____

Argued - November 17, 2008

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

2008-02259

DECISION & ORDER

Claude Narracci, etc., respondent, v John D.
Brigati, et al., appellants.

(Index No. 29822/04)

Tonetti & Ambrosino (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for appellants.

Jeffrey S. Shein & Associates, P.C., Syosset, N.Y. (Charles R. Strugatz of counsel), for respondent.

In an action, inter alia, to recover damages for wrongful death, the defendants appeal from an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated January 25, 2008, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A vehicle operated by the plaintiff's decedent collided with a vehicle operated by the defendant John D. Brigati and owned by the defendant White Post Growers, Inc., at the intersection of Third Avenue and West Pulaski Road in Huntington. The plaintiff's decedent was traveling on Third Avenue, which was governed by a stop sign at its intersection with West Pulaski Road. The defendant driver was traveling on West Pulaski Road, which was not governed by a traffic control signal at its intersection with Third Avenue.

The defendants failed to submit evidence sufficient to establish their entitlement to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

December 9, 2008

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Although the decedent's direction of travel was governed by a stop sign, triable issues of fact exist as to the facts surrounding the accident and whether the defendant driver was free of negligence (*see Virzi v Fraser*, 51 AD3d 784; *Campbell-Lopez v Cruz*, 31 AD3d 475; *Hernandez v Bestway Beer & Soda Distrib.*, 301 AD2d 381). Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment.

FISHER, J.P., ANGIOLILLO, DICKERSON 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