

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

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Submitted - November 6, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
STEVEN W. FISHER
RANDALL T. ENG, JJ.

2007-06505

DECISION & ORDER

Salvatore Cirincione, et al., plaintiffs-respondents,
v Atlantic Hylan Corp., defendant-respondent,
M.J. & T. Corp., appellant.

(Index No. 100338/05)

Morris Duffy Alonso & Faley, New York, N.Y. (Anna J. Ervolina and Andrea Alonso of counsel), for appellant.

Ameduri, Galante & Friscia, Staten Island, N.Y. (John Friscia of counsel), for plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the defendant M.J. & T. Corp. appeals from an order of the Supreme Court, Richmond County (Minardo, J.), dated May 24, 2007, which denied its motion for summary judgment dismissing the amended complaint and all cross claims insofar as asserted against it.

ORDERED that the order is modified, on the facts and in the exercise of discretion, by adding the words “without prejudice to renewal after the defendant M.J. & T. Corp. complies with all outstanding discovery orders” following the words “motion for summary judgment is denied”; as so modified, the order is affirmed, without costs or disbursements.

The Supreme Court properly denied the motion of M.J. & T. Corp. (hereinafter MJ&T) for summary judgment, inasmuch as it had failed to comply with discovery orders, and the material still outstanding was directly relevant to the issues presented on its motion for summary judgment (*see Rosa v Colonial Tr.*, 276 AD2d 781; *Campbell v City of New York*, 220 AD2d 476,

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477; *Soto v City of Long Beach*, 197 AD2d 615, 616). Under the circumstances here, we modify the order to the extent of providing that the denial of MJ&T's motion for summary judgment is without prejudice to renewal after it complies with all outstanding discovery orders (*cf. Abulhasan v Uniroyal Goodrich Tire Co.*, 258 AD2d 728, 729).

MASTRO, J.P., RIVERA, FISHER and ENG, 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