

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

D21665
C/prt

_____AD3d_____

Submitted - December 4, 2008

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2007-10170

DECISION & ORDER

Majorie Hillen, appellant, v Queens Long
Island Medical Group, P.C., respondent.

(Index No. 11856/03)

Steven R. Blyer, Lake Success, N.Y. (Lauren Kurland of counsel), for appellant.

Hoey, King, Toker & Epstein, New York, N.Y. (Jennifer L. Budner of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Suffolk County (R. Doyle, J.), dated September 4, 2007, which granted
the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A property owner has a duty to take reasonable measures to control the foreseeable
conduct of third parties on the property to prevent them from intentionally harming or creating an
unreasonable risk of harm to others (*see DeRyss v New York Cent. R.R. Co.*, 275 NY 85; *Jaume v
Ry Mgt. Co.*, 2 AD3d 590, 591; *Murphy v Turian House*, 232 AD2d 535). This duty arises when
there is an ability and opportunity to control such conduct, and an awareness of the need to do so (*see
D'Amico v Christie*, 71 NY2d 76, 85; *DeRyss v New York Cent. R.R. Co.*, 275 NY 85; *Jaume v Ry
Mgt. Co.*, 2 AD3d at 591).

Here, the defendant medical facility made a prima facie showing of its entitlement to
judgment as a matter of law by submitting evidence demonstrating that it did not have the ability and
opportunity to control the conduct of the unidentified child who suddenly ran ahead of his mother and

December 30, 2008

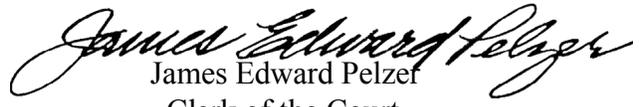
Page 1.

HILLEN v QUEENS LONG ISLAND MEDICAL GROUP, P.C.

accidentally bumped into the elderly plaintiff, and that it had no awareness of the need to control the conduct of the child, who was under his mother's supervision (*see Jaume v Ry Mgt. Co.*, 2 AD3d at 591; *Lazar v TJX Cos.*, 1 AD3d 319; *Lee v Durow's Rest.*, 238 AD2d 384, 385). In opposition to the motion, the plaintiff failed to raise a triable issue of fact (*see Troiano v DeMarco*, 50 AD3d 1020, 1021; *Jaume v Ry Mgt. Co.*, 2 AD3d at 591; *Lazar v TJX Cos.*, 1 AD3d 319, 319). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

PRUDENTI, P.J., DILLON, ENG and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court