

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

D22408
G/prt

_____AD3d_____

Argued - January 29, 2009

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-03596

DECISION & ORDER

Dollyann Newkirk-Briggs, et al., respondents,
v County of Putnam, et al., appellants, et al.,
defendant.

(Index No. 2619/06)

Michael G. Santangelo, Uniondale, N.Y. (Congdon, Flaherty, O’Callaghan, Reid, Donlon, Travis & Fishlinger [Kathleen D. Foley], of counsel), for appellants.

Finkelstein & Partners, LLP, Newburgh, N.Y. (Marie M. DuSault of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Putnam County (O’Rourke, J.), dated March 17, 2008, which granted the plaintiffs’ motion for leave to reargue their opposition to that branch of the defendants’ motion which was for summary judgment dismissing the complaint insofar as asserted against the defendants County of Putnam, Putnam County Sheriff Department, and Sheriff of Putnam, which was determined in an order of the same court dated January 3, 2008, and, upon reargument, vacated the order dated January 3, 2008, and, in effect, denied that branch of the defendants’ motion which was for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the plaintiffs’ motion for leave to reargue inasmuch as the plaintiffs based their motion upon matters of fact and law allegedly overlooked by the court in determining the prior motion (*see* CPLR 2221[d]). Contrary to the defendants’ assertion, the plaintiffs did not raise an issue not previously advanced.

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Upon reargument, the Supreme Court properly vacated its original determination and, in effect, denied that branch of the defendants' motion which was for summary judgment dismissing the complaint since triable issues of fact exist as to whether the defendant John Alfano drove his vehicle in reckless disregard for the safety of others, thereby violating the standard of care imposed by Vehicle and Traffic Law § 1104(e) (*see Campbell v City of Elmira*, 84 NY2d 505; *Rouse v Dahlem*, 228 AD2d 777).

RIVERA, J.P., LEVENTHAL, BELEN and CHAMBERS, 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