

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

D22504
T/prt

_____AD3d_____

Submitted - February 4, 2009

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
JOSEPH COVELLO
ARIEL E. BELEN, JJ.

2008-07576

DECISION & ORDER

Adina Benedikt, et al., respondents, v
Certified Lumber Corporation, et al.,
appellants, et al., defendant.

(Index No. 26584/07)

Landman Corsi Ballaine & Ford, P.C. (Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success, N.Y. [Christopher Simone, Robert M. Ortiz, and Gerard S. Rath], of counsel), for appellants.

Ephrem J. Wertenteil, New York, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants Certified Lumber Corporation, Certified Lumber, LLC, and Israel Nieman appeal from an order of the Supreme Court, Kings County (Partnow, J.), dated July 9, 2008, which granted the plaintiffs' motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiffs established a prima facie case for summary judgment in their favor on the issue of liability by demonstrating that the defendant driver failed to yield the right of way to the injured plaintiff, Adina Benedikt, who was crossing the street within the crosswalk with the pedestrian "WALK" signal in her favor (*see Zabusky v Cochran*, 234 AD2d 542; *Jermin v APA Truck Leasing Co.*, 237 AD2d 255). The plaintiffs submitted an affidavit by the injured plaintiff to that effect, which was supported by copies of the police accident reports and the MV-104 report signed by the defendant driver, containing that defendant's admission against interest that he did not see the injured plaintiff before he struck her (*see Niyazov v Bradford*, 13 AD3d 501; *Vaden v Rose*, 4 AD3d 468;

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Kemenyash v McGoey, 306 AD2d 516; *Guevara v Zaharakis*, 303 AD2d 555). The affidavit of the defendant driver, submitted in opposition to the motion, merely raised feigned issues of fact, which are insufficient to defeat a motion for summary judgment (*see Capraro v Staten Is. Univ. Hosp.*, 245 AD2d 256; *Miller v City of New York*, 214 AD2d 657; *Garvin v Rosenberg*, 204 AD2d 388), and the defendants failed to demonstrate that further discovery was warranted (*see Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760).

SPOLZINO, J.P., RITTER, COVELLO 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