

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

D22749  
Y/hu

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Submitted - February 17, 2009

PETER B. SKELOS, J.P.  
STEVEN W. FISHER  
FRED T. SANTUCCI  
RUTH C. BALKIN, JJ.

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2007-09422

DECISION & ORDER

Scott MacDonald, appellant, v Gabriel E. Agbim,  
et al., respondents.

(Index No. 12140/04)

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Fine, Fine & Associates, LLP, Melville, N.Y. (Scott J. Fine and Robert P. Baquet counsel), for appellant.

Kelly, Rode & Kelly, LLP, Mineola, N.Y.(Susan M. Ulrich and Loris Zeppieri of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Suffolk County (Pines, J.), entered August 28, 2007, which, upon the denial of his motion pursuant to CPLR 4401 for judgment in his favor as a matter of law, made at the close of evidence, and upon a jury verdict, is in favor of the defendants and against him, in effect, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Under the doctrine of “danger invites rescue” (*Wagner v International Ry. Co.*, 232 NY 176, 180), a party may be held liable when “by his [or her] culpable act [he or she] has placed another person in a position of imminent peril which invites a third person, the rescuing plaintiff, to come to his aid” (*Guarino v Mine Safety Appliance Co.*, 25 NY2d 460, 464; *see Provenzano v Sam*, 23 NY2d 256, 260; *Wagner v Intl. Railway Co.*, 232 NY 176, 180; *Khalil v Guardino*, 300 AD2d 360, 362; *Ha-Sidi v South Country Cent. School Dist.*, 148 AD2d 580, 582).

The Supreme Court properly denied the plaintiff’s motion pursuant to CPLR 4401 for

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judgment in his favor as a matter of law on the issue of whether the defendants were liable to him under that doctrine. Affording the defendants every favorable inference, we find that the evidence presented a rational basis upon which the jury could have found in favor of the defendants on that issue (*compare Szczerbiak v Pilat*, 90 NY2d 553, 556). Moreover, the verdict was supported by a fair interpretation of the evidence (*see Nicastro v Park*, 113 AD2d 129).

The plaintiff's remaining contentions either are unpreserved for appellate review, are without merit, or constitute harmless error.

SKELOS, J.P., FISHER, SANTUCCI and BALKIN, 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