

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

D22817
G/prt

_____AD3d_____

Submitted - March 4, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
ANITA R. FLORIO
RANDALL T. ENG, JJ.

2008-05784

DECISION & ORDER

Kate Fauvell, respondent, v
James Samson, et al., appellants.

(Index No. 35445/06)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck and
Stacy R. Seldin of counsel), for appellants.

Jay R. Vidars, PLLC, Carle Place, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Martin, J.), dated April 22, 2008, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

This action arises out of an intersection collision between a car that the defendant James Samson was driving and a bicycle on which the plaintiff was riding. It is undisputed that the plaintiff was riding her bicycle southbound and against traffic on Smith Street, a one-way street in Brooklyn, when she collided with the car, which was traveling eastbound on Union Street through the intersection with Smith Street. Inasmuch as the fault for the accident depends, in part, on whether Samson drove through a red signal when entering the intersection (*see Ramos v Triboro*

Coach Corp., 31 AD3d 625), and as there are triable issues of fact as to whether he did so, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint.

MASTRO, J.P., FISHER, FLORIO 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