

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

D23126
C/prt

_____AD3d_____

Submitted - April 1, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
HOWARD MILLER
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2008-10629

DECISION & ORDER

Marcelino Ramos, respondent, v Cooper
Tire and Rubber Company, appellant,
et al., defendants.

(Index No. 24972/06)

Goldberg Segalla LLP, White Plains, N.Y. (William T. O'Connell and William G.
Kelly of counsel), for appellant.

Andrew F. Walle, Jr., P.C., Brooklyn, N.Y. (Lee A. Fine and James M. Sheridan, Jr.,
of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendant Cooper Tire and Rubber Company appeals from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated September 18, 2008, which denied its motion, denominated as one for leave to renew its prior motion pursuant to CPLR 510(3) to change the place of trial of the action from Kings County to Ulster County, but which was, in effect, a motion pursuant to CPLR 510(1) and 511 to change the place of trial of the action from Kings County to Ulster County.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the appellant's motion, in effect, pursuant to CPLR 510(1) and 511 to change the place of trial of the action from Kings County to Ulster County (*see Baez v Marcus*, 58 AD3d 585, 586; *Obas v Grappell*, 43 AD3d 431, 432; *Callanan Indus. v Sovereign Constr. Co.*, 44 AD2d 292, 295). The appellant failed to meet its initial burden of demonstrating that none of the parties resided in Kings County when the action

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was commenced (*see* CPLR 503[a]; *Baez v Marcus*, 58 AD3d at 586; *Galan v Delacruz*, 4 AD3d 449; *Llorca v Manzo*, 254 AD2d 396, 397).

MASTRO, J.P., FISHER, MILLER, DICKERSON 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