

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

D23418
W/hu

_____AD3d_____

Argued - April 30, 2009

PETER B. SKELOS, J.P.
STEVEN W. FISHER
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2008-01731

DECISION & ORDER

Jimmy Ojeda, respondent, v Garden of Eden
Enterprises, Inc., et al., appellants, et al., defendants
(and a third-party action).

(Index No. 16224/05)

Cozen O'Connor, New York, N.Y. (Jed M. Weiss of counsel), for appellants.

Ogen & Associates, P.C., New York, N.Y. (Eitan Alexander Ogen of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants Garden of Eden Enterprises, Inc., and Garden of Eden Gourmet, Inc., appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schack, J.), dated January 25, 2008, as denied that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In view of the plaintiff's allegations as to the causes of his injury, the appellants failed to submit evidence sufficient to establish, prima facie, that they were not liable for the plaintiff's accident (*see Rivello v Waldron*, 47 NY2d 297, 302; *Mendez v City of New York*, 7 AD3d 766, 767-768; *Baraban v Orient-Express Hotels*, 292 AD2d 203, 204; *Frederick v Lansdown Invs. of N.Y.*, 228 AD2d 300, 301; *cf. Dooley v Peerless Importers, Inc.*, 42 AD3d 199, 205).

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Accordingly, the Supreme Court properly denied that branch of the appellants' motion which was for summary judgment dismissing the complaint insofar as asserted against them.

SKELOS, J.P., FISHER, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court