

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

D23693
Y/prt

_____AD3d_____

Argued - May 22, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-11666

DECISION & ORDER

Judy McGrath, et al., appellants, v Transitional Services of New York for Long Island, Inc., et al., defendants, J. Kokolakis Contracting, Inc., respondent.

(Index No. 02-12105)

Parker Waichman Alonso, LLP, New York, N.Y. (Arnold E. DiJoseph, P.C. [Arnold E. DiJoseph III] of counsel), for appellants.

Bivona & Cohen, P.C., New York, N.Y. (Andrew Sapon and Anthony J. McNulty of counsel), for respondent.

Smith Mazure Director Wilkins Young & Yagerman, P.C. (Emeka Nwokoro and Joel M. Simon of counsel), for defendant Eldor Contracting Corp.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated October 26, 2007, as granted that branch of the cross motion of the defendant J. Kokolakis Contracting, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the respondent J. Kokolakis Contracting, Inc.

Contrary to the plaintiffs' contention, the Supreme Court properly granted that branch of the cross motion of the defendant J. Kokolakis Contracting, Inc. (hereinafter Kokolakis) which was for summary judgment dismissing the complaint insofar as asserted against it. Kokolakis established

June 30, 2009

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its prima facie entitlement to judgment as a matter of law through the affidavit and report of a medical expert attesting that the injured plaintiffs' alleged exposure to construction dust and debris did not cause their medical conditions and symptoms. In opposition, the plaintiffs failed to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The plaintiffs proffered the affirmation of a physician for the injured plaintiffs, who merely offered unsubstantiated and speculative opinions that their medical conditions and symptoms were caused by exposure to construction dust and debris. Such conclusory assertions were insufficient to raise a triable issue of fact as to whether Kokolakis caused the alleged injuries of the injured plaintiffs (*see Parker v Mobil Oil Corp.*, 7 NY3d 434, 448-450; *DiDomenico v Long Beach Plaza Corp.*, 60 AD3d 618, 620; *Hellert v Town of Hamburg*, 50 AD3d 1481, 1483; *Nawrocki v Coastal Corp.*, 45 AD3d 1341, 1342; *Edelson v Placeway Constr. Corp.*, 33 AD3d 844, 845).

The plaintiffs' remaining contentions are without merit.

SKELOS, J.P., SANTUCCI, BALKIN and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court