

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

D23857
Y/prt

_____AD3d_____

Argued - May 21, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-00071

DECISION & ORDER

Michael Salmonese, appellant, v
Bonnie Gulli, et al., respondents.

(Index No. 102468/05)

Wittenstein & Associates, P.C., Brooklyn, N.Y. (Harlan Wittenstein of counsel), for appellant.

Connors & Connors, P.C., Staten Island, N.Y. (Robert J. Pfuhler of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Richmond County (Fusco, J.), dated December 2, 2008, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The present action arises from a two-car collision, occurring on May 5, 2005, when the plaintiff was traveling southbound on Hylan Boulevard, at its intersection with Beach Avenue, on Staten Island, and the defendant Mark Gulli was attempting to execute a left turn from the left-turn lane of northbound Hylan Boulevard. After commencing this action, the plaintiff moved for summary judgment in his favor on the issue of liability.

The evidence submitted by the plaintiff in support of the motion, including the deposition testimony of Mark Gulli, failed to demonstrate the absence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), inter alia, as to whether the plaintiff was operating his motor vehicle at an excessive rate of speed in violation of Vehicle and Traffic Law § 1180(a), and

July 7, 2009

Page 1.

SALMONESE v GULLI

whether that conduct was a proximate cause of the accident. Accordingly, the plaintiff failed to make a prima facie showing of entitlement to judgment as a matter of law. Failure to make such showing required denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

RIVERA, J.P., FLORIO, BELEN and AUSTIN, 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