

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

D24167
G/prt

_____AD3d_____

Argued - May 26, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
HOWARD MILLER
THOMAS A. DICKERSON, JJ.

2007-11406

DECISION & ORDER

Oismer R. Caraway, appellant, v
Deborah Johnson, respondent.

(Index No. 6030/05)

O'Neil & Burke, LLP, Poughkeepsie, N.Y. (Richard J. Burke, Jr., of counsel), for appellant.

McCabe & Mack, LLP, Poughkeepsie, N.Y. (Kimberly Hunt Lee of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Dolan, J.), dated November 9, 2007, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

This action arises from a one-car motor vehicle accident which occurred on the evening of December 12, 2003, in Dutchess County. The plaintiff was a front-seat passenger in the defendant's vehicle when the vehicle allegedly encountered a patch of ice, skidded out of control, and struck a guardrail.

The Supreme Court properly denied the plaintiff's motion for summary judgment on the issue of liability. Although the plaintiff established his prima facie entitlement to judgment as a

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matter of law on the issue of liability, in opposition, the defendant raised a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

SPOLZINO, J.P., DILLON, MILLER and DICKERSON, 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