

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

D24171
C/hu

_____AD3d_____

Argued - May 29, 2009

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2008-06903
2008-09880

DECISION & ORDER

Ivanna Goldenberg, et al., appellants, v Jamie L.
Palewicz, defendant, John A. Washington,
et al., respondents.

(Index No. 26503/06)

Marshall S. Bluth, New York, N.Y., for appellants.

James G. Bilello, Westbury, N.Y. (Patricia McDonagh of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiffs appeal (1) from an order of the Supreme Court, Kings County (F. Rivera, J.), dated June 24, 2008, which granted the motion of the defendants John A. Washington and Karen A. Washington for summary judgment dismissing the complaint insofar as asserted against them, and (2), as limited by their brief, from so much of an order of the same court dated September 19, 2008, as, upon reargument, adhered to its original determination.

ORDERED that the appeal from the order dated June 24, 2008, is dismissed, as that order was superseded by the order dated September 19, 2008, made upon reargument; and it is further,

ORDERED that the order dated September 19, 2008, is reversed insofar as appealed from, on the law, and, upon reargument, the order dated June 24, 2008, is vacated and the motion of the defendants John A. Washington and Karen A. Washington for summary judgment dismissing the complaint insofar as asserted against them is denied; and it is further,

August 4, 2009

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ORDERED that one bill of costs is awarded to the appellants.

“There can be more than one proximate cause of an accident” (*Cox v Nunez*, 23 AD3d 427, 427). The evidence submitted by defendants John A. Washington and Karen A. Washington did not eliminate all issues of fact as to whether Karen A. Washington failed to use reasonable care to avoid the subject motor vehicle collision and, if so, whether such failure contributed to the accident (*see Franco v Rizzo*, 61 AD3d 818, 820; *Rotondi v Rao*, 49 AD3d 520, 521). Accordingly, their motion for summary judgment dismissing the complaint insofar as asserted against them should have been denied, regardless of the sufficiency of the opposing papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

SKELOS, J.P., ANGIOLILLO, CHAMBERS and LOTT, 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