

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

D24632
Y/prt

_____AD3d_____

Argued - September 17, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
SHERI S. ROMAN, JJ.

2009-01780

DECISION & ORDER

Abid Naz, respondent, v Christian
Eckhoff Truck Bodies, Inc., appellant.

(Index No. 17034/06)

Hammill, O'Brien, Croutier, Dempsey, Pender & Koehler, P.C., Syosset, N.Y. (Anton Piotroski and Richard C. Koehler of counsel), for appellant.

Brecher Fishman Pasternack Walsh Tilker & Ziegler, P.C., New York, N.Y. (Diamond and Diamond, LLC [Stuart Diamond], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated January 5, 2009, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured when a "liftgate" attached to the back of a truck owned by his employer malfunctioned. The plaintiff alleges that the defendant improperly performed a particular repair to the liftgate before the accident and that he was injured as a result thereof. The repair was performed pursuant to a contract between the defendant and the plaintiff's employer,

The defendant demonstrated its entitlement to judgment as a matter of law by submitting evidence establishing that it owed no duty of care to the plaintiff (*see Stiver v Good & Fair Carting & Moving, Inc.*, 9 NY3d 253, 257; *Church v Callanan Indus.*, 99 NY2d 104, 111; *Espinal*

October 13, 2009

Page 1.

NAZ v CHRISTIAN ECKHOFF TRUCK BODIES, INC.

v Melville Snow Contrs., 98 NY2d 136, 138). However, in opposition, the plaintiff raised a triable issue of fact as to whether the defendant, in performing the repair, failed to exercise reasonable care in the performance of its contractual duties and launched a force or instrument of harm (*see Bienaime v Reyer*, 41 AD3d 400, 403; *Ocampo v Abetta Boiler & Welding Serv., Inc.*, 33 AD3d 332; *Davilmar v City of New York*, 7 AD3d 559, 560-561). Accordingly, the Supreme Court correctly denied the defendant's motion for summary judgment dismissing the complaint.

FISHER, J.P., COVELLO, ANGIOLILLO and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court