

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

D24755
Y/prt

_____AD3d_____

Submitted - September 29, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-06675

DECISION & ORDER

Ines Vucetic, et al., appellants, v Macy's East, Inc.,
et al., defendants third-party plaintiffs-respondents;
Intercounty Paving Associates, LLC, et al.,
third-party defendants-respondents.

(Index No. 11714/04)

Behrins & Behrins, PC, Staten Island, N.Y. (Jonathan B. Behrins of counsel), for appellants.

Maloof, Lebowitz, Connahan & Oleske, P.C., New York, N.Y. (Jerald F. Oleske of counsel), for defendants third-party plaintiffs-respondents.

Lewis Scaria & Cote, LLC, White Plains, N.Y. (Deborah A. Summers of counsel), for third-party defendant-respondent Intercounty Paving Associates, LLC.

Charles J. Siegel, New York, N.Y. (Alfred T. Lewyn of counsel), for third-party defendant-respondent Backhoe Services, Inc.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (Minardo, J.), dated May 15, 2008, which denied their motion for leave to reargue and renew their opposition to the separate motions of the defendants Macy's East, Inc., and Federated Department Stores, Inc., the third-party defendant Intercounty Paving Associates, LLC, and the third-party defendant Backhoe Services, Inc., for summary judgment dismissing the complaint, which had been granted in a prior order of the same court dated October

October 27, 2009

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19, 2007.

ORDERED that the appeal from so much of the order dated May 15, 2008, as denied that branch of the plaintiffs' motion which was for leave to reargue is dismissed, as no appeal lies from an order denying leave to reargue (*see Lehman v North Greenwich Landscaping, LLC*, 65 AD3d 1293); and it is further,

ORDERED that the order dated May 15, 2008, is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the defendants and third-party defendants, appearing separately and filing separate briefs.

The Supreme Court properly denied that branch of the plaintiffs' motion which was for leave to renew. The plaintiffs failed to present a reasonable justification for their failure to present the "new facts" on the original motion (*see CPLR 2221[e][3]*). In any event, even considering the allegedly new material, the result would not be different.

MASTRO, J.P., FISHER, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court