

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

D24899
W/kmg

_____AD3d_____

Argued - October 9, 2009

FRED T. SANTUCCI, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2008-10744

DECISION & ORDER

Edward O'Brien, et al., respondents,
v Baker Equipment, etc., appellant
(and a third-party action).

(Index No. 28976/04)

D'Amato & Lynch, LLP, New York, N.Y. (Alfred A. D'Agostino, Jr., of counsel),
for appellant.

Dell, Little, Trovato & Vecere, LLP, Uniondale, N.Y. (Keri A. Wehrheim of counsel),
for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals, as limited by its notice of appeal and brief, from so much of an order of the Supreme Court, Suffolk County (Molia, J.), entered October 8, 2008, as denied those branches of its motion which were for summary judgment dismissing the causes of action alleging negligence and strict products liability premised on defective product design.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied those branches of the defendant's motion which were for summary judgment dismissing the causes of action alleging strict products liability and negligence premised on defective product design. The defendant manufacturer failed to establish, prima facie, that it did not design or manufacture an unreasonably dangerous product or that, if it did, it did not cause the accident (*see Mincieli v Pequana Indus., Inc.*, 56 AD3d 627, 628; *Sabessar v Presto*

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Sales & Serv., Inc., 45 AD3d 829, 831). Accordingly, the defendant failed to establish its prima facie entitlement to judgment as a matter of law, and the Supreme Court properly denied those branches of the defendant's motion which were for summary judgment dismissing the causes of action alleging negligence and strict products liability premised on defective product design, regardless of the sufficiency of the papers submitted by the plaintiffs in opposition.

SANTUCCI, J.P., CHAMBERS, HALL and ROMAN, 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