

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

D25165
W/prt

_____AD3d_____

Argued - October 26, 2009

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-08663

DECISION & ORDER

Victoria Leevson, et al., appellants, v
Bay Condos, LLC, et al., defendants,
Walgreen Eastern Co., Inc., respondent.

(Index No. 17920/06)

Tenenbaum & Berger, LLP, Brooklyn, N.Y. (Michael Cohen of counsel), for appellants.

Lowenstein Sandler P.C., New York, N.Y. (Robert C. Boneberg and Stefan B. Kalina of counsel), for respondent.

In an action, inter alia, to recover damages for injury to personal property, the plaintiffs appeal, as limited by their notice of appeal and brief, from so much of an order of the Supreme Court, Kings County (Martin, J.), dated March 31, 2008, as denied their motion to strike the answer of the defendant Walgreen Eastern Co., Inc., based upon its spoliation of evidence and for summary judgment on the issue of liability insofar as asserted against that defendant.

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

The Supreme Court properly denied the plaintiffs' motion to strike the answer of the defendant Walgreen Eastern Co., Inc. (hereinafter Walgreen), based on its spoliation of evidence and for summary judgment on the issue of liability insofar as asserted against Walgreen (*see* CPLR 3126; *Mylonas v Town of Brookhaven*, 305 AD2d 561, 562-563). The plaintiffs failed to establish, as a matter of law, that Walgreen "intentionally or negligently failed to preserve crucial evidence after being placed on notice that such evidence might be needed for future litigation" (*Sloane v Costco*

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Wholesale Corp., 49 AD3d 522, 523; *see Dessources v Good Samaritan Hosp.*, 65 AD3d 1008, 1010; *Lovell v United Skates of Am., Inc.*, 28 AD3d 721, 721; *Goll v American Broadcasting Cos., Inc.*, 10 AD3d 672, 673; *Baglio v St. John's Queens Hosp.*, 303 AD2d 341, 342).

MASTRO, J.P., SANTUCCI, BELEN and CHAMBERS, 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