

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

D25569
W/nl

_____AD3d_____

Argued - November 13, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2008-09831
2009-02470

DECISION & ORDER

Jennie Kluz, appellant, v Peter Adams, et al., respondents,
et al., defendant.

(Index No. 3447/05)

Krakower & Goldman (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for appellant.

Kral Clerkin Redmond Ryan Perry & Girvan, LLP, New York, N.Y. (Oliver W. Williams of counsel), for respondents Peter Adams and Peter Adams, d/b/a Peter Adams Landscaping.

Paganini, Gambeski, Cioci, Cusumano & Farole, Lake Success, N.Y. (George P. Gambeski of counsel), for respondents Mountain View Mobile Home, James Freeman, Jr., and Fred Bohlander.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals (1), as limited by her brief, from so much of an order of the Supreme Court, Rockland County (Weiner, J.), dated September 16, 2008, as granted that branch of the motion of the defendants Peter Adams and Peter Adams, d/b/a Peter Adams Landscaping, which was for summary judgment dismissing the complaint insofar as asserted against them and granted the separate motion of the defendants Mountain View Mobile Home, James Freeman, Jr., and Fred Bolander which was for summary judgment dismissing the complaint insofar as asserted against them, and denied her cross motion for summary judgment on the issue of liability insofar as asserted against Peter Adams and Peter Adams, d/b/a Peter Adams Landscaping, and (2), as limited by her brief, from so much of an

order of the same court dated February 23, 2009, as denied that branch of her motion which was for leave to renew her opposition to the summary judgment motions.

ORDERED that the orders are affirmed insofar as appealed from, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

Peter Adams and Peter Adams, Inc., d/b/a Peter Adams Landscaping, incorrectly sued herein as Peter Adams, d/b/a Peter Adams Landscaping (hereinafter the Adams defendants) satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law. In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Mallory v City of New Rochelle*, 41 AD3d 556, 557; *Hyland v City of New York*, 32 AD3d 822, 823-824). Accordingly, the Supreme Court correctly awarded summary judgment to the Adams defendants dismissing the complaint insofar as asserted against them.

Since the Adams defendants were, as a matter of law, not negligent, vicarious liability for their conduct cannot be imposed upon Mountain View Mobile Home Associates, LLC, incorrectly sued herein as Mountain View Mobile Home, James Freeman, Jr., and Fred Bohlander, incorrectly sued herein as Fred Bolander (hereinafter the Mountain View defendants). Accordingly, the Supreme Court also correctly awarded summary judgment to the Mountain View defendants dismissing the complaint insofar as asserted against them.

The Supreme Court providently exercised its discretion in denying that branch of the plaintiff's motion which was for leave to renew her opposition to the summary judgment motions (*see Ramirez v Khan*, 60 AD3d 748).

COVELLO, J.P., SANTUCCI, CHAMBERS and HALL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court