

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

D25875
H/kmg

_____AD3d_____

Argued - November 13, 2009

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

2008-05945

DECISION & ORDER

Alvin Wray, respondent, v Clifford Wray, et al.,
appellants, et al., defendants.

(Index No. 1687/06)

Enealia S. Nau, Brooklyn, N.Y. (Arnold J. Ludwig of counsel), for appellants.

David J. Hernandez, New York, N.Y. (Michael Paulonis of counsel), for respondent.

In an action, inter alia, to rescind a deed to real property on the ground of lack of mental capacity, the defendants Clifford Wray and Barbara Wray appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Saitta, J.), dated May 29, 2008, as denied that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them.

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

The defendants Clifford Wray and Barbara Wray (hereinafter together the appellants) failed to satisfy their prima facie burden of establishing their entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *cf. Brown v Graziano*, 51 AD3d 962, 963; *Crawn v Sayah*, 31 AD3d 367, 368). The Supreme Court properly disregarded the evidence submitted by the appellants for the first time in their reply papers (*see Morales v Coram Materials Corp.*, 51 AD3d 86, 95; *Adler v Suffolk County Water Auth.*, 306 AD2d 229, 230). Accordingly, the Supreme Court properly denied that branch of the appellants' motion which was for summary

judgment dismissing the complaint insofar as asserted against them, regardless of the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

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

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court