

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

D25928  
O/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 22, 2009

FRED T. SANTUCCI, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

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2009-08449

DECISION & ORDER

Mary Amico, etc., respondent, v Victor Vallarelli,  
appellant.

(Index No. 8445/08)

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Susan B. Owens, White Plains, N.Y. (Joseph M. Zecca of counsel), for appellant.

James D. Moran, East Quogue, N.Y., for respondent.

In an action, inter alia, to recover damages for wrongful death, the defendant appeals from an order of the Supreme Court, Westchester County (Smith, J.), dated August 11, 2009, which denied his motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant established his entitlement to judgment as a matter of law by submitting, inter alia, his expert's report concluding that the defendant was not negligent. In response, however, the plaintiff raised triable issues of fact. Accordingly, the defendant's motion for summary judgment dismissing the complaint was properly denied (*see Tapia v Royal Tours Serv., Inc.*, 67 AD3d 894; *Lopez v Reyes-Flores*, 52 AD3d 785; *Gomez v Hilfiger*, 45 AD3d 728, 729; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *cf. Bolta v Lohan*, 242 AD2d 356).

The defendant's remaining contention is without merit.

SANTUCCI, J.P., DICKERSON, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

January 26, 2010

AMICO v VALLARELLI