

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

D26006
H/prt

_____AD3d_____

Argued - December 1, 2009

REINALDO E. RIVERA, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2008-11551

DECISION & ORDER

William Scheidt, et al., respondents,
v Toll Bros., Inc., et al., appellants.

(Index No. 3541/06)

McCarter & English, LLP, New York, N.Y. (Robert S. Bernstein of counsel), for appellants.

Goldstein & Metzger, LLP, Poughkeepsie, N.Y. (Paul J. Goldstein of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Dutchess County (Dolan, J.), entered November 6, 2008, which granted the plaintiffs' motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1).

ORDERED that the order is affirmed, with costs.

The plaintiffs established their prima facie entitlement to judgment as a matter of law on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) by showing that the plaintiff William Scheidt sustained an injury as a result of the defendants' failure to guard against a gravity-related risk (*see Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695). In opposition, the defendants failed to raise a triable issue of fact. As the Supreme Court correctly determined, the questions of credibility raised by the defendants were relevant only to the issue of damages, not liability (*see S.J. Capelin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338, 341).

Accordingly, the Supreme Court properly granted the plaintiffs' motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1).

RIVERA, J.P., MILLER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in cursive script, reading "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court