

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

D26484
O/ct

_____AD3d_____

Argued - February 25, 2010

A. GAIL PRUDENTI, P.J.
RUTH C. BALKIN
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2009-02137

DECISION & ORDER

Tyler Friedlander, etc., et al., respondents, v Doherty Enterprises, Inc., d/b/a Applebee's Neighborhood Bar and Grill, appellant.

(Index No. 28381/06)

John T. Ryan & Associates, Riverhead, N.Y. (David M. Reilly of counsel), for appellant.

Furey, Furey, Leverage, Manzione, Williams & Darlington, P.C., Hempstead, N.Y. (Susan Weihs Darlington of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Suffolk County (Spinner, J.), dated February 3, 2009, which granted the plaintiffs' motion for summary judgment dismissing the counterclaim.

ORDERED that the order is affirmed, with costs.

The plaintiffs established their prima facie entitlement to judgment as a matter of law dismissing the defendant's counterclaim by demonstrating that the acts complained of did not implicate a duty owed to the world at large, but merely involved a claim that the infant plaintiff was negligently supervised by his parent, a non-actionable tort (*see Rios v Smith*, 95 NY2d 647, 651; *LaTorre v Genesee Mgt.*, 90 NY2d 576, 579; *Zikely v Zikely*, 98 AD2d 815, 816, *aff'd* 62 NY2d 907; *Holodook v Spencer*, 36 NY2d 35, 50-51). In opposition, the defendant failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, the Supreme Court properly

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granted the plaintiffs' motion for summary judgment dismissing the counterclaim (*see Mazza v Ed Tompkins Plumbing Corp.*, 53 AD3d 599; *Horan v Brown*, 43 AD3d 608, 609; *Wheeler v Sears Roebuck & Co.*, 37 AD3d 710, 711; *McNamara v Banney*, 249 AD2d 950, 951; *Navaro v Ieraci*, 214 AD2d 713, 714).

PRUDENTI, P.J., BALKIN, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court