

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

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Submitted - March 4, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2009-07133

DECISION & ORDER

Anthony P. Stanford, respondent,
v Linda A. Dushey, et al., appellants.

(Index No. 22624/08)

Eustace & Marquez, White Plains, N.Y. (Diane C. Miceli of counsel), for appellants.

Daniel P. Buttafuoco & Associates, PLLC, Woodbury, N.Y. (Ellen Buchholz of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Westchester County (Giacomo, J.), entered June 8, 2009, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability by submitting evidence that the defendant driver failed to yield the right-of-way as the plaintiff proceeded lawfully through the intersection (*see* Vehicle and Traffic Law § 1142[a]; *Khan v Nelson*, 68 AD3d 1062; *Falcone v Ibarra*, 67 AD3d 858, 859; *Yelder v Walters*, 64 AD3d 762, 763-764; *Grossman v Spector*, 48 AD3d 750, 751). In opposition, the defendants failed to raise a triable issue of fact. Since the defendant driver admitted in her affidavit that she did not see the plaintiff's vehicle prior to the collision, the defendants' contention that the plaintiff may have been speeding or may have been negligent in failing to take evasive action was speculative (*see Loch v Garber*, 69 AD3d 814; *Khan v Nelson*, 68 AD3d at 1062; *Falcone v Ibarra*, 67 AD3d at 859; *Yelder v Walters*, 64 AD3d at 764; *Exime v Williams*, 45 AD3d 633, 634). Furthermore, the defendants failed to establish that additional discovery would yield any facts indicating that the plaintiff was at fault and justify the denial of the plaintiff's motion (*see* CPLR 3212[f]; *Falcone v Ibarra*, 67 AD3d

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at 859; *Carpio v Leahy Mech. Corp.*, 30 AD3d 554, 555; *Szczotka v Adler*, 291 AD2d 444). Accordingly, the Supreme Court properly granted the plaintiff's motion for summary judgment on the issue of liability.

DILLON, J.P., BALKIN, DICKERSON and LOTT, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court