

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

D26909  
H/ct

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Argued - March 11, 2010

STEVEN W. FISHER, J.P.  
MARK C. DILLON  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

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2009-03089

DECISION & ORDER

William G. King, et al., plaintiffs-respondents,  
v Keith Falko, etc., defendant-respondent,  
Chris Mendolia, appellant.

(Index No. 00753/05)

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Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., of counsel), for appellant.

John L. Juliano, P.C., East Northport, N.Y., and Vincent G. Berger, Jr., Babylon, N.Y., for plaintiffs-respondents (one brief filed).

Finder and Cuomo, LLP, New York, N.Y. (Paul L. Meli and Sherri A. Jayson of counsel), for defendant-respondent.

In an action to recover damages for personal injuries, etc., the defendant Chris Mendolia appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Gazzillo, J.), dated February 27, 2009, as denied his motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

Viewing the evidence in the light most favorable to the plaintiffs and the defendant Keith Falko, as administrator of the estate of Robert F. Falko, the defendant Chris Mendolia failed to establish his prima facie entitlement to judgment as a matter of law (*see Winegrad v New York*

*Univ. Med. Ctr.*, 64 NY2d 851). Under the circumstances, triable issues of fact exist as to whether Mendolia caused the defendant Keith Falko's decedent to flee in fear of being chased by Mendolia, and whether that conduct was a proximate cause of the accident. Since Mendolia failed to meet his prima facie burden, we need not review the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

Accordingly, the Supreme Court properly denied Mendolia's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him.

FISHER, J.P., DILLON, DICKERSON and BELEN, 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