

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

D26920
H/hu

_____AD3d_____

Argued - March 16, 2010

JOSEPH COVELLO, J.P.
ANITA R. FLORIO
HOWARD MILLER
RANDALL T. ENG, JJ.

2009-06332

DECISION & ORDER

Steven Thiele, appellant, v Oakland Valley, Inc., d/b/a
Oakland Valley Race Park, respondent.

(Index No. 939/07)

Zeccola & Selinger, LLC, Goshen, N.Y. (John S. Selinger and Mark A. Schwab
of counsel), for appellant.

French & Casey, LLP, New York, N.Y. (Douglas R. Rosenzweig of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Orange County (Slobod, J.), dated April 27, 2009, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant established its prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff's claims were barred by a release the plaintiff signed before participating in a go-cart driving class the defendant offered at its facility (*see Boateng v Motorcycle Safety School, Inc.*, 51 AD3d 702, 703; *see also Lago v Krollage*, 78 NY2d 95, 99-100). In opposition, the plaintiff, who offered no evidence from which it could be found that the release was "void as against public policy and wholly unenforceable" by reason of General Obligations Law § 5-326, failed to raise a triable issue of fact (*see Baschuk v Diver's Way Scuba*, 209 AD2d 369, 370; *cf. Fusco v Now & Zen*, 294 AD2d 466, 467). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

April 13, 2010

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The plaintiff's remaining contentions have been rendered academic in light of our determination.

COVELLO, J.P., FLORIO, MILLER and ENG, 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