

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

D26995  
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Argued - March 8, 2010

WILLIAM F. MASTRO, J.P.  
HOWARD MILLER  
LEONARD B. AUSTIN  
SHERI S. ROMAN, JJ.

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2009-02575

DECISION & ORDER

David Lorme, et al., plaintiffs-appellants, v Luis Payano, et al., defendants-appellants, Jose Chavez, defendant, Petrocelli Electric Co., Inc., et al., respondents.

(Index No. 9395/04)

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Law Office of Peter D. DiBona, P.C., Brooklyn, N.Y., for plaintiffs-appellants.

Molod Spitz & DeSantis, P.C., New York, N.Y. (Ross G. Weaver and Marcy Sonneborn of counsel), for defendants-appellants.

Edward Garfinkel (Fiedelman & McGaw, Jericho, N.Y. [Andrew Zajac], of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, and the defendants Luis Payano, Park Slope Leasing Corporation, and Mendon Leasing Corporation separately appeal, from an order of the Supreme Court, Kings County (Schmidt, J.), dated February 3, 2009, which granted the motion of the defendants Petrocelli Electric Co., Inc., and the City of New York for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the appeal by the plaintiffs from so much of the order as granted that branch of the motion of the defendants Petrocelli Electric Co., Inc., and the City of New York which was for summary judgment dismissing the cross claims is dismissed, as the plaintiffs are not aggrieved by that portion of the order (*see* CPLR 5511); and it is further,

June 8, 2010

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ORDERED that the appeal by the defendants Luis Payano, Park Slope Leasing Corporation, and Mendon Leasing Corporation from so much of the order as granted that branch of the motion of the defendants Petrocelli Electric Co., Inc., and the City of New York which was for summary judgment dismissing the complaint insofar as asserted against them is dismissed, as those defendants are not aggrieved by that portion of the order (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed, with one bill of costs payable by the appellants appearing separately and filing separate briefs.

The respondents, Petrocelli Electric Co., Inc., and the City of New York, made a prima facie showing of their entitlement to judgment as a matter of law dismissing the complaint and all cross claims insofar as asserted against them. In opposition, the appellants failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the respondents' motion for summary judgment (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

MASTRO, J.P., MILLER, AUSTIN and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court