

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

D27001  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 1, 2010

HOWARD MILLER, J.P.  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

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2008-10264

DECISION & ORDER

Gary Bonavita, et al., appellants, v Irving McNicholas,  
et al., respondents, et al., defendants.

(Index No. 5699/04)

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Schrier Fiscella & Sussman, LLC, Garden City, N.Y. (Richard E. Schrier and Aaron M. Ryne of counsel), for appellants.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Rebecca K. Devlin and Michael G. Kruzynski of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Nassau County (Murphy, J.), dated September 30, 2008, which granted the motion of the defendants Irving McNicholas and Professional Exterminating Co., Inc., for leave to amend their answer to include an affirmative defense that the action is barred by the Workers' Compensation Law.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in granting the respondents' motion pursuant to CPLR 3025(b) for leave to amend their answer to assert an affirmative defense that the action is barred by the Workers' Compensation Law, as the proposed amendment would not cause prejudice or surprise and is neither palpably insufficient nor patently devoid of merit (*see* CPLR

April 20, 2010

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3025[b]; *Liss v Trans Auto Sys.*, 68 NY2d 15, 22-23; *Murray v City of New York*, 43 NY2d 400, 404-407; *Lucido v Mancuso*, 49 AD3d 220, 229; *Brown v Collora*, 278 AD2d 266, 267).

MILLER, J.P., LEVENTHAL, CHAMBERS 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