

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

D27397  
H/hu

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

Argued - April 15, 2010

REINALDO E. RIVERA, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
LEONARD B. AUSTIN, JJ.

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2009-04663

DECISION & ORDER

Zev Wertzberger, etc., et al., appellants, v Bennie  
L. Hodge, et al., respondents.

(Index No. 11013/08)

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Subin Associates, LLP (Shayne Dachs, Corker, Sauer & Dachs, LLP, Mineola, N.Y. [Norman H. Dachs and Jonathan A. Dachs], of counsel), for appellants.

O'Connor, McGuinness, Conte, Doyle & Oleson, White Plains, N.Y. (Montgomery L. Effinger of counsel), for respondents Bennie L. Hodge and Javonne S. Johnson.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for respondents Kesser CL, Inc., and David Engel.

In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Rockland County (Nelson, J.), dated April 3, 2009, which denied their motion for summary judgment on the issue of liability with leave to renew upon the completion of depositions.

ORDERED that the order is affirmed, with one bill of costs.

Contrary to the plaintiffs' contention, they failed to make a prima facie showing of their entitlement to judgment as a matter of law on the issue of liability against any of the defendants. Accordingly, the Supreme Court properly denied the plaintiffs' motion for summary judgment on the issue of liability with leave to renew upon the completion of depositions (*see Todd v Godek*, 71 AD3d 872; *Scibelli v Hopchick*, 27 AD3d 720; *see also Diamond v Scudder*, 45 AD3d 630, 633; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

May 18, 2010

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In light of the plaintiffs' failure to meet their prima facie burden, we need not consider the sufficiency of the opposition papers (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Todd v Godek*, 71 AD3d 872).

In light of this determination, we need not reach the plaintiffs' remaining contention.

RIVERA, J.P., FISHER, FLORIO and AUSTIN, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court