

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

D27935
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_____AD3d_____

Argued - May 17, 2010

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
LEONARD B. AUSTIN, JJ.

2009-10811

DECISION & ORDER

Morena Montanaro, respondent, v Moobul Hossain,
et al., defendants, Elite Limousine Plus, Inc., appellant.

(Index No. 15834/07)

Gwertzman Lefkowitz Burman Smith & Marcus, New York, N.Y. (David S. Smith of counsel), for appellant.

Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Stephen C. Glasser of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Elite Limousine Plus, Inc., appeals from an order of the Supreme Court, Nassau County (Marber, J.), dated October 19, 2009, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was struck by a limousine which was leased by the driver, the defendant Nazmul Huque, from the vehicle's owner, the defendant Moobul Hossain. At the time of the accident, Huque had been directed by the appellant Elite Limousine Plus, Inc. (hereinafter the appellant), to pick up a customer. The appellant moved for summary judgment dismissing the complaint insofar as asserted against it on the ground that it did not employ Huque. The appellant contended that Huque was an independent contractor, and therefore it was not liable for his alleged negligence. However, the evidence submitted by the appellant in support of the motion, including, inter alia, the deposition testimony of Huque and a franchise agreement between Huque and the

appellant, did not eliminate all triable issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324) as to whether Huque was an independent contractor when the accident occurred (*see Carrion v Orbit Messenger*, 82 NY2d 742, 744; *Anikushina v Moodie*, 58 AD3d 501, 501-502; *Halpin v Hernandez*, 51 AD3d 724, 724-724). Under these circumstances, it is not necessary to address the sufficiency of the plaintiff's opposition papers (*see Tchjevskia v Chase*, 15 AD3d 389).

Accordingly, the Supreme Court properly denied the appellant's motion for summary judgment dismissing the complaint insofar as asserted against it.

SANTUCCI, J.P., ANGIOLILLO, DICKERSON and AUSTIN, 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