

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

D27982
O/prt

_____AD3d_____

Argued - May 25, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
HOWARD MILLER
PLUMMER E. LOTT, JJ.

2009-04476

DECISION & ORDER

Ronnie Pope, et al., respondents, v
818 Jeffco Corp., appellant, et al.,
defendant.

(Index No. 19468/05)

Havkins Rosenfeld Ritzert & Varriale, LLP, New York, N.Y. (Tara C. Fappiano of counsel), for appellant.

Miller & Eisenman, LLP, New York, N.Y. (Michael P. Eisenman of counsel), for respondents.

In an action to recover damages for personal injuries, the defendant 818 Jeffco Corp. appeals from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated March 13, 2009, as granted that branch of the plaintiffs' motion which was to clarify an order of the same court dated November 6, 2008, granting those branches of its motion pursuant to CPLR 4404(a) which were to set aside a jury verdict against it and for a new trial, to the extent of directing that the new trial shall be on the issue of liability only.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In a related appeal, we determine that the Supreme Court properly granted those branches of the motion of the defendant 818 Jeffco Corp. pursuant to CPLR 4404(a) which were to set aside a jury verdict against it and for a new trial (*see Pope v 818 Jeffco Corp.*, _____AD3d_____, [Appellate Division Docket No. 2008-11645, decided herewith]). On this appeal, we agree with the Supreme Court that the new trial should be limited to the issue of liability, since no error

June 22, 2010

POPE v 818 JEFFCO CORP.

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requiring a new trial on the issue of liability affected in any way the jury's determination of damages (see *Bonds v Laidlaw Tr., Inc.*, 61 AD3d 1345; *Kelly v Kronenberg*, 2 AD3d 1406, 1408; *Johnson v Schrader*, 299 AD2d 815, 816).

The appellant's remaining contention is not properly before us on this appeal.

FISHER, J.P., SANTUCCI, MILLER 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