

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

D28146
Y/kmg

_____AD3d_____

Submitted - June 15, 2010

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2009-07046
2009-10490

DECISION & ORDER

Bonnie Stoner, respondent, v Aurelia Parr, et al.,
appellants.

(Index No. 10550/07)

James R. McCarl, Montgomery, N.Y., for appellants.

Finkelstein & Partners, LLP, Newburgh, N.Y. (Andrew L. Spitz of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from (1) so much of an interlocutory judgment of the Supreme Court, Orange County (Onofry, J.), dated July 8, 2009, as, upon a jury verdict, found them 50% at fault in the happening of the accident, and (2) so much of an order of the same court dated September 11, 2009, as denied their cross motion pursuant to CPLR 4404(a) which was to set aside the verdict and for a new trial.

ORDERED that the interlocutory judgment and the order are affirmed insofar as appealed from, with one bill of costs.

Contrary to the defendants' contention, the Supreme Court properly declined to instruct the jury pursuant to PJI 2:14 regarding the emergency doctrine. Viewing the evidence presented at trial in the light most favorable to the defendants, the Supreme Court correctly determined that any emergency situation which may have existed had dissipated prior to the defendant driver's negligent operation of the vehicle which struck the plaintiff and, therefore, that there was no reasonable view of the evidence to support the requested instruction (*see generally Caristo v*

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Sanzone, 96 NY2d 172, 175; *Sweeney v Linde*, 59 AD3d 948, 948-949; *Kizis v Nehring*, 27 AD3d 1106, 1107).

The defendants' remaining contentions are without merit.

MASTRO, J.P., FLORIO, BELEN and CHAMBERS, 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