

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

D28265
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_____AD3d_____

Argued - June 10, 2010

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2009-07274

DECISION & ORDER

Fanny Fernandez, plaintiff-respondent, v Jean Jeune,
et al., defendants-respondents, Luz Martinez, appellant.

(Index No. 8383/07)

Picciano & Scahill, P.C., Westbury, N.Y. (Francis J. Scahill and Andrea E. Ferrucci of counsel), for appellant.

Dansker & Aspromonte, New York, N.Y. (Raymond Maceira of counsel), for plaintiff-respondent.

Gold, Stewart, Kravatz, Benes LLP, Westbury, N.Y. (Jeffrey B. Gold, Robert J. Stone, Jr., and Lauren Lagrue of counsel), for defendants-respondents Paul Essai and Marcaisse Cherident.

In an action to recover damages for personal injuries, the defendant Luz Martinez appeals from an order of the Supreme Court, Kings County (Partnow, J.), dated March 24, 2009, which denied her motion for summary judgment dismissing the complaint insofar as asserted against her.

ORDERED that the order is affirmed, with one bill of costs to the plaintiff-respondent and the defendants-respondents Paul Essai and Marcaisse Cherident appearing separately and filing separate briefs.

The defendant Luz Martinez failed to make a prima facie showing of entitlement to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Triable

August 10, 2010

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issues of fact exist, inter alia, as to whether Martinez was negligent in failing to remove her vehicle from a dangerous place and, if so, whether her negligence proximately caused the plaintiff's injuries (*see Eltahan v Rejouis*, 7 AD3d 660, 661; *O'Sullivan v Minjae Kim*, 293 AD2d 728, 729). The failure to make a prima facie showing eliminating those issues of fact required the denial of the motion, regardless of the sufficiency of the opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853). Accordingly, the Supreme Court properly denied Martinez's motion for summary judgment dismissing the complaint insofar as asserted against her.

RIVERA, J.P., BALKIN, AUSTIN and ROMAN, 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