

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

D23263
W/kmg

_____AD3d_____

Submitted - April 16, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2008-08337

DECISION & ORDER

Joseph DeVito, appellant, v
City of New York, et al., respondents.

(Index No. 23710/01)

Everett J. Petersson, P.C., Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and
Alan G. Krams of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Kitzes, J.), entered July 28, 2008, which, after a jury trial, and upon granting the defendants' motion for judgment as a matter of law pursuant to CPLR 4401, made after the close of the evidence, is in favor of the defendants and against him, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

A motion for judgment as a matter of law pursuant to CPLR 4401 may be granted only when the trial court determines that, upon the evidence presented, there is no rational process by which the jury could find in favor of the nonmoving party (*see Szczerbiak v Pilat*, 90 NY2d 553, 556; *Bryan v Staten Is. Univ. Hosp.*, 54 AD3d 793). In considering such a motion, "the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant" (*Szczerbiak v Pilat*, 90 NY2d at 556; *see Cathey v Gartner*, 15 AD3d 435, 436). Under the

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circumstances presented here, the Supreme Court properly determined that there was no rational process by which the jury could find in favor of the plaintiff.

RIVERA, J.P., DILLON, BELEN and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court