

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

D23584
O/kmg

_____AD3d_____

Argued - May 11, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-10396

DECISION & ORDER

Augusto Perez, plaintiff-respondent, v Bergen-Passaic Elevator of N.Y., Inc., et al., defendants-respondents, Michel Marcelin, et al., appellants.

(Index No. 13301/06)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Marjorie E. Bornes of counsel), for appellants.

Valdebenito & Ardito, LLP, Garden City, N.Y. (Venessa D. Melly of counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the defendants Michel Marcelin and M.A.R. Operating Corp. appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Bunyan, J.), dated July 23, 2008, as, upon renewal, adhered to a prior determination in an order dated January 9, 2008, denying their motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, upon renewal, the order dated January 9, 2008, is vacated, and the motion of the defendants Michel Marcelin and M.A.R. Operating Corp. for summary judgment dismissing the complaint and all cross claims insofar as asserted against them is granted.

The plaintiff alleged that he was riding a bicycle on a one-way street when a white truck owned by the defendant Bergen-Passaic Elevator of N.Y., Inc., and operated by Alex Palau,

June 16, 2009

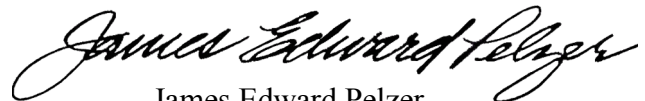
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traveling to the left of the plaintiff, struck the rear of the bicycle. The plaintiff then allegedly came into contact with a vehicle operated by the defendant Michel Marcelin and owned by the defendant M.A.R. Operating Corp. (hereinafter together the defendants), which was to the right of him. Upon renewal, the defendants submitted evidence sufficient to establish, prima facie, that Marcelin did not contribute to the injury-producing event (*see generally Diaz v Green*, 47 AD3d 612; *Ely v Pierce*, 302 AD2d 489). In opposition, the plaintiff failed to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320). Accordingly, upon renewal, the Supreme Court should have granted the defendants' motion for summary judgment.

SKELOS, J.P., SANTUCCI, BELEN and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court