

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

D23709  
T/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 20, 2009

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL, JJ.

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2009-01424

DECISION & ORDER

Joseph Martino, appellant, v  
Vito G. Brinzo, et al., respondents.

(Index No. 103335/08)

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Taller & Wizman, P.C., Forest Hills, N.Y. (Y. David Taller of counsel), for appellant.

Hawkins, Feretic & Daly, LLC, New York, N.Y. (Matthew J. Zizzamia of counsel),  
for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Richmond County (McMahon, J.), dated January 27, 2009, which denied his motion for summary judgment with leave to renew upon the completion of discovery.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's assertions, the proof submitted on the motion did not establish that the subject accident involved a rear-end collision with a stopped vehicle. The plaintiff failed to make a prima facie showing of his entitlement to summary judgment on the issue of liability. "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *see Simplex Grinnell, LP v Ruby Weston Manor*, 59 AD3d 610; *Smalls v Mercy Medical Center*, 50 AD3d 670; *Greenstein v R&R of G.C., Inc.*, 50 AD3d 637). The Supreme Court therefore properly denied his motion for

June 23, 2009

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summary judgment with leave to renew upon the completion of discovery.

FISHER, J.P., COVELLO, ANGIOLILLO and LEVENTHAL, 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