

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

D23973
Y/prt

_____AD3d_____

Argued - June 9, 2009

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
JOSEPH COVELLO
LEONARD B. AUSTIN, JJ.

2008-07087

DECISION & ORDER

Jernine Lawson, plaintiff, v Rutland Nursing Home, Inc., et al., defendants third-party plaintiffs-respondents; Copy Right, Inc., third-party defendant-appellant.

(Index No. 28956/04)

James J. Toomey, New York, N.Y. (Evy L. Kazansky and Denise L. Thomas of counsel), for third-party defendant-appellant.

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, LLP, New York, N.Y. (Joseph C. Bellard of counsel), for defendants third-party plaintiffs-respondents.

In an action to recover damages for personal injuries, the third-party defendant appeals from an order of the Supreme Court, Kings County (Balter, J.), dated June 4, 2008, which denied its motion for summary judgment dismissing the third-party complaint.

ORDERED that the order is affirmed, with costs.

The third-party defendant (hereinafter the appellant) made a prima facie showing of entitlement to judgment as a matter of law dismissing the third-party complaint (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320). However, in opposition to the motion, the defendants third-party plaintiffs (hereinafter the respondents) raised triable issues of fact. Among other things, they submitted the deposition testimony of the appellant's former employee, which presented inconsistencies with the deposition testimony of the plaintiff on material issues. Thus, the respondents raised triable issues regarding the credibility of both witnesses that should be resolved by the trier of fact (*see Artoglou v Gene Scappy Realty Corp.*, 57 AD3d 460, 462-463; *Makaj v Metropolitan Transp. Auth.*, 18 AD3d 625, 626-627; *Kolivas v Kirchoff*, 14 AD3d 493, 493).

August 11, 2009

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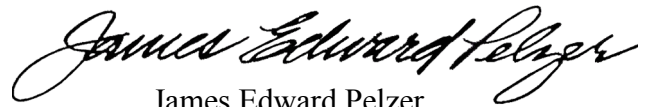
LAWSON v RUTLAND NURSING HOME, INC.

The appellant's remaining contentions are without merit.

Accordingly, the Supreme Court properly denied the appellant's motion for summary judgment dismissing the third-party complaint.

PRUDENTI, P.J., MILLER, COVELLO and AUSTIN, 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