

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

D12576  
A/mv

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

Argued - October 6, 2006

FRED T. SANTUCCI, J.P.  
GABRIEL M. KRAUSMAN  
WILLIAM F. MASTRO  
ROBERT A. SPOLZINO, JJ.

2005-06232

DECISION & ORDER

Marjorie Desinor, appellant, v New York City  
Transit Authority, respondent.

(Index No. 4500/92)

Morton Povman, P.C., Forest Hills, N.Y. (Bruce S. Povman of counsel), for appellant.

Wallace D. Gossett, Brooklyn, N.Y. (Lawrence Heisler of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Dye, J.), entered April 11, 2005, which, upon a jury verdict, is in favor of the defendant and against her, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

“[A]ll litigants, regardless of the merits of their case, are entitled to a fair trial” (*Habenicht v R.K.O. Theatres*, 23 AD2d 378, 379; see *Salzano v City of New York*, 22 AD2d 656). “Inevitably a trial court sets the pattern for the jury” (*Livant v Adams*, 17 AD2d 784). A trial judge should “at all times maintain an impartial attitude and exercise a high degree of patience and forbearance” (*Salzano v City of New York*, *supra* at 657, quoting *Buckley v 2570 Broadway Corp.*, 12 AD2d 473). A jury should be given an opportunity to consider the issues in “a fair, calm and unprejudiced manner” (*Salzano v City of New York*, *supra* at 656; see *Perkins v New York Racing Assn.*, 51 AD2d 585). Here, while we agree that some of the Trial Judge’s remarks were improper, reversal of the judgment is not warranted as the remarks did not divert the jurors’ attention from the

November 14, 2006

Page 1.

DESINOR v NEW YORK CITY TRANSIT AUTHORITY

issues to be determined with respect to liability or deprive the plaintiff of a fair trial (*cf. Pickering v Lehrer, McGovern, Bovis*, 25 AD3d 677; *Vazquez v Costco Co.*, 17 AD3d 350; *Matter of Travelers Indem. Co. v Mohammed*, 14 AD3d 710; *Ougourlian v New York City Health & Hosps. Corp.*, 5 AD3d 644).

The plaintiff's remaining contentions are without merit.

SANTUCCI, J.P., KRAUSMAN, MASTRO and SPOLZINO, 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