

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

D13064  
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Argued - October 24, 2006

HOWARD MILLER, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
ROBERT J. LUNN, JJ.

2005-07845

DECISION & ORDER

Carrie Schwartz, respondent, v Mark G. Speaker,  
et al., defendants, TLC Laser Eye Centers, Inc.,  
appellant.

(Index No. 48266/02)

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Catalano Gallardo & Petropoulos, LLP, Jericho, N.Y. (Ralph A. Catalano and Michele R. Levin of counsel), for appellant.

Leav & Steinberg, LLP, New York, N.Y. (Daniela F. Henriques of counsel), for respondent.

Clausen Miller (Edward J. Guardaro, Jr., White Plains, N.Y. [Patricia D'Alvia] of counsel), for defendants Mark G. Speaker and Laser & Corneal Surgery Associates, P.C.

White, Fleischner & Fino, LLP, New York, N.Y. (Renee S. Schwartz of counsel), for respondent Dana J. Morschauser.

In an action, inter alia, to recover damages for medical malpractice, the defendant TLC Laser Centers, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Rosenberg, J.), dated June 17, 2005, as denied that branch of its motion which was for summary judgment dismissing the cause of action to recover damages for medical malpractice insofar as asserted against it.

December 12, 2006

SCHWARTZ v SPEAKER

Page 1.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs.

In support of the branch of its motion which was for summary judgment dismissing the cause of action to recover damages for medical malpractice insofar as asserted against it, the appellant failed to demonstrate its prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562; *Mduba v Benedictine Hosp.*, 52 AD2d 450, 452). Thus, the Supreme Court properly denied that branch of its motion.

MILLER, J.P., RITTER, SANTUCCI and LUNN, 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