

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

D14164
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Submitted - February 6, 2007

HOWARD MILLER, J.P.
ROBERT W. SCHMIDT
DAVID S. RITTER
DANIEL D. ANGIOLILLO, JJ.

2006-04067

DECISION & ORDER

Sandra McMillan, respondent, v New York City
Transit Authority, appellant.

(Index No. 14330/03)

Wallace D. Gossett (Lawrence Heisler and Steven Efron, New York, N.Y., of counsel), for appellant.

Sonkin, Fifer & Gershon, New York, N.Y. (Howard Fifer of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Solomon, J.), entered December 16, 2005, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant established its entitlement to judgment as a matter of law, thereby shifting the burden to the plaintiff to submit admissible evidence raising a triable issue of fact (*see Ferrante v American Lung Assn.*, 90 NY2d 623). In opposition to the defendant's motion, the plaintiff submitted admissible evidence raising a triable issue of fact as to the size of the gap between the subway station platform and the train door where she fell and whether the existence of such a gap constituted negligence on the part of the defendant (*id.*; *cf. Yarde v New York City Tr. Auth.*, 4 AD3d

352). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment.

MILLER, J.P., SCHMIDT, RITTER and ANGIOLILLO, 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