

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

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Submitted - February 7, 2007

STEPHEN G. CRANE, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
MARK C. DILLON  
RUTH C. BALKIN, JJ.

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2006-03075

DECISION & ORDER

Leonid Khait, respondent, v New York City  
Transit Authority, appellant.

(Index No. 37301/03)

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Wallace D. Gossett (Steve S. Efron, New York, N.Y., of counsel), for appellant.

Mark M. Basichas & Associates, P.C., New York, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Hinds-Radix, J.), dated February 16, 2006, as denied its cross motion to dismiss the amended complaint for failure to comply with General Municipal Law § 50-e(2).

ORDERED that the order is reversed insofar as appealed from, on the law and in the exercise of discretion, with costs, and the cross motion to dismiss the amended complaint for failure to comply with General Municipal Law § 50-e(2) is granted.

General Municipal Law § 50-e(2) provides, in part, that a notice of claim shall "set forth . . . the time when, the place where, and the manner in which the claim arose." The plaintiff's initial notice of claim stated that the claim arose on December 30, 2002, without specifying the time of the accident. At a hearing held pursuant to General Municipal Law § 50-h on June 24, 2004, the plaintiff testified that the accident occurred on December 28, 2002, at about 1:30 A.M. On July 19, 2004, the defendant was served with an amended complaint reflecting the correct date of the accident. Under the circumstances of this case, the defendant was prejudiced (*see Kotler v City of New York*,

March 13, 2007

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266 AD2d 355; *Pollicino v New York City Tr. Auth.*, 225 AD2d 750; *Rodriguez v City of New York*, 223 AD2d 536, 537). Therefore, the Supreme Court improvidently exercised its discretion in denying the defendant's cross motion to dismiss the amended complaint.

CRANE, J.P., SANTUCCI, FLORIO, DILLON and BALKIN, 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