

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

D14230  
X/gts

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

Argued - February 8, 2007

WILLIAM F. MASTRO, J.P.  
REINALDO E. RIVERA  
MARK C. DILLON  
EDWARD D. CARNI, JJ.

2006-03915

DECISION & ORDER

Maria Grasso, etc., et al., appellants, v  
Rama Koslowe, respondent, et al., defendants.

(Index No. 10364/00)

Lawrence P. Biondi, White Plains, N.Y. (Lisa M. Comeau of counsel), for appellants.

Belair & Evans LLP, New York, N.Y. (Raymond W. Belair and James B. Reich of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice, etc., the plaintiffs appeal from an order of the Supreme Court, Richmond County (Minardo, J.), dated March 17, 2006, which granted the motion of the defendant Rama Koslowe pursuant to CPLR 4404(a) to set aside a jury verdict in favor of the plaintiffs and against the defendant Rama Koslowe and for a new trial.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion under CPLR 4404(a) in setting aside the jury verdict and granting a new trial to the defendant Rama Koslowe (hereinafter the defendant) based on the pervasive inflammatory and improper summation remarks of counsel for the plaintiff (*see Pagano v Murray*, 309 AD2d 910; *King v City of New York*, 209 AD2d 673; *Steidel v County of Nassau*, 182 AD2d 809; *Weinberger v City of New York*, 97 AD2d 819, 820; *La Russo v Pollack*, 88 AD2d 584; *see also Berkowitz v Marriott Corp.*, 163 AD2d 52).

We note that the trial court properly precluded, during the defendant's cross-examination of the plaintiff's expert witness, the use of a deposition transcript from an unrelated case

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in which that expert witness previously testified (*see Caserta v Levittown School Dist.*, 12 AD3d 549; *Linker v Sears Roebuck & Co.*, 232 AD2d 613; *Ingebretsen v Manha*, 218 AD2d 784).

The plaintiff's remaining contentions are academic in light of our determination.

MASTRO, J.P., RIVERA, DILLON and CARNI, 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