

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

D16193
G/kmg

_____AD3d_____

Argued - June 18, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.

2006-08771

DECISION & ORDER

Brian T. Diercks, et al., appellants, v New York City
Board of Education, et al., respondents, et al., defendants.

(Index No. 319/02)

Stephen R. Krawitz, LLC, New York, N.Y., for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath,
Andrew Potak, and Alan Beckoff of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their notice of appeal and brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), dated June 28, 2006, as granted that branch of the cross motion of the defendants New York City Board of Education and the City of New York which was for summary judgment dismissing the complaint insofar as asserted against them.

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

The respondents made a prima facie showing of their entitlement to judgment as a matter of law by demonstrating that they owed no special duty to the plaintiff Brian T. Diercks (*see Bonner v City of New York*, 73 NY2d 930; *DiGravina v City of New York*, 278 AD2d 359; *Jacobellis v City of New York*, 197 AD2d 671; *Lasker v State of New York*, 194 AD2d 646; *Berler v City of New*

York, 152 Misc 2d 133). The plaintiffs failed to raise a triable issue of fact in opposition and, therefore, the motion for summary judgment was properly granted.

SPOLZINO, J.P., SKELOS, LIFSON and BALKIN, 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