

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

D16288  
Y/hu

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Argued - September 4, 2007

STEPHEN G. CRANE, J.P.  
GLORIA GOLDSTEIN  
PETER B. SKELOS  
EDWARD D. CARNI, JJ.

2006-09796

DECISION & ORDER

Matthew J. Long, respondent, v Allen AME  
Transportation Corp., et al., defendants,  
Academy Bus Tours of New York, Inc., appellant.

(Index No. 3352/06)

Conway, Farrell, Curtin & Kelly, P.C., New York, N.Y. (Jonathan T. Uejio of counsel), for appellant.

Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Brian J. Shoot and Wendell Y. Tong of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Academy Bus Tours of New York, Inc., appeals from an order of the Supreme Court, Queens County (Dorsa, J.), dated September 6, 2006, which denied its motion to dismiss the complaint, in effect, pursuant to CPLR 3211(a)(1).

ORDERED that the order is affirmed, with costs.

A motion to dismiss a complaint pursuant to CPLR 3211(a)(1) “may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326; *see Leon v Martinez*, 84 NY2d 83, 88; *Kalmon Dolgin Affiliates of Long Is. v Robert Plan Corp.*, 248 AD2d 594). As the Supreme Court correctly concluded, the complaint

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contains sufficient allegations to state a cognizable cause of action against the appellant, which is not definitively refuted by documentary evidence.

CRANE, J.P., GOLDSTEIN, SKELOS and CARNI, 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