

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

D16509
X/kmg

_____AD3d_____

Argued - September 20, 2007

STEPHEN G. CRANE, J.P.
ANITA R. FLORIO
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-06608

DECISION & ORDER

Valeriya Tolpygina, respondent, v Diana Teper, etc.,
et al., defendants, Steven Gutin, etc., appellant.

(Index No. 24549/04)

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, N.Y. (Richard E. Lerner and Bianca Michelis of counsel), for appellant.

Mark M. Basichas & Associates, P.C., New York, N.Y. (Brian Issac of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice, the defendant Steven Gutin appeals, as limited by his brief, from stated portions of an order of the Supreme Court, Kings County (Steinhardt, J.), dated June 12, 2006, as, among other things, denied that branch of his motion which was for summary judgment dismissing the complaint insofar as asserted against him.

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

The Supreme Court correctly denied that branch of the appellant's motion which was for summary judgment dismissing the complaint insofar as asserted against him. The parties offered conflicting expert opinions based on radiological studies containing ambiguities as to whether the plaintiff sustained a fracture to her left hip during the time that the alleged malpractice occurred (*see Dandrea v Hertz*, 23 AD3d 332). Moreover, a triable issue of fact exists with respect to whether the appellant treated the plaintiff or whether she was treated by a chiropractor.

October 9, 2007

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The appellant's remaining contentions are without merit or have been rendered academic.

CRANE, J.P., FLORIO, LIFSON and CARNI, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court