

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

D16865  
X/hu

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

Argued - October 19, 2007

STEPHEN G. CRANE, J.P.  
ROBERT A. LIFSON  
JOSEPH COVELLO  
WILLIAM E. McCARTHY, JJ.

---

2006-08797

DECISION & ORDER

Antonia Angelone, etc., et al., appellants,  
v City of New York, respondent.

(Index No. 10614/04)

---

Kerner & Kerner, New York, N.Y. (Kenneth T. Kerner and Richard Kerner of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and Kristin M. Helmers of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Richmond County (Mega, J.), dated July 27, 2006, as granted those branches of the defendant's motion which were for summary judgment dismissing the first and third causes of action in the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and those branches of the defendant's motion which were for summary judgment dismissing the first and third causes of action are denied.

The 4½ -year-old infant plaintiff allegedly was injured when she fell from playground equipment located at the Crescent Beach Park on Staten Island (hereinafter the park). The plaintiffs alleged, inter alia, that the infant plaintiff's injuries were the result of negligence in designing, constructing, and maintaining the playground equipment at the park by the defendant City of New York. Following joinder of issue and discovery, the City moved for summary judgment dismissing the complaint. In the order appealed from, the Supreme Court, among other things, granted the City's motion. We reverse the order insofar as appealed from.

November 7, 2007

Page 1.

ANGELONE v CITY OF NEW YORK

The City failed to establish its prima facie entitlement to judgment as a matter of law since it did not present evidence that it maintained the playground equipment at the park in a reasonably safe condition (*cf. Sobti v Lindenhurst School Dist.*, 35 AD3d 439, 439; *Swan v Town of Brookhaven*, 32 AD3d 1012, 1013; *Banks v Freeport Union Free School Dist.*, 302 AD2d 341, 341-342).

The parties' remaining contentions either are without merit or need not be addressed in light of our determination.

CRANE, J.P., LIFSON, COVELLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court