

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

D17772  
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Submitted - January 2, 2008

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON, JJ.

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2007-09873

DECISION & ORDER

Ezri Elihu Tolchin, etc., et al., appellants,  
v Amy Glaser, etc., et al., respondents.

(Index No. 14552/07)

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Jaroslawicz & Jaros, LLC, New York, N.Y. (David Jaroslawicz of counsel), for appellants.

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

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Bayne, J.), dated September 26, 2007, which granted the defendants' motion for a protective order and struck the plaintiffs' notices to admit.

ORDERED that the order is affirmed, with costs.

“The purpose of a notice to admit is only to eliminate from the issues in litigation matters which will not be in dispute at trial [citations omitted]. It is not intended to cover ultimate conclusions, which can only be made after a full and complete trial [citations omitted]” (*Rosenfeld v Vorsanger*, 5 AD3d 462; *see Glasser v City of New York*, 265 AD2d 526; *Gomez v Long Island R.R.*, 201 AD2d 455, 456). Moreover, “the purpose of a notice to admit is not to obtain information in lieu of other disclosure devices, such as the taking of depositions before trial” (*DeSilva v*

*Rosenberg*, 236 AD2d 508, 509). Contrary to the plaintiffs' arguments, the notices to admit improperly sought admissions that go to the heart of the matter at issue and were, therefore, properly stricken.

MASTRO, J.P., FISHER, FLORIO, ANGIOLILLO and DICKERSON, 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