

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

D18950
G/prt

_____AD3d_____

Argued - March 28, 2008

ROBERT A. SPOLZINO, J.P.
ROBERT A. LIFSON
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2006-09927

DECISION & ORDER

Richard Galvan, et al., appellants, v Anthony
Robinson, et al., defendants, New York Times
Company, et al., respondents.

(Index No. 51879/02)

Robinson & Yablon, P.C., New York, N.Y. (Thomas Torto and Jason Levine of
counsel), for appellants.

Churbuck Calabria Jones & Materazo, P.C., Hicksville, N.Y. (Robert B. Churbuck
of counsel), for respondents.

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, Kings County (Schmidt, J.),
dated August 7, 2006, as granted that branch of the motion of the defendants New York Times
Company and Publishers Circulation Fulfillment, Inc., which was for summary judgment dismissing
the complaint insofar as asserted against them.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,
and that branch of the motion of the defendants New York Times Company and Publishers
Circulation Fulfillment, Inc., which was for summary judgment dismissing the complaint insofar as
asserted against them is denied.

“[T]he proponent of a summary judgment motion must make a prima facie showing
of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the
absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The
defendants New York Times Company and Publishers Circulation Fulfillment, Inc., failed to do so

April 22, 2008

Page 1.

GALVAN v ROBINSON

here (*see Lane v Lyons*, 277 AD2d 428). Accordingly, the sufficiency of the plaintiffs' opposing papers need not be considered (*see Kristina Denise Enters., Inc. v Arnold*, 41 AD3d 788, 789; *O'Leary v Bravo Hylan, LLC*, 8 AD3d 542, 542; *Berkowitz v Decker Transp. Co.*, 5 AD3d 712, 713).

SPOLZINO, J.P., LIFSON, FLORIO and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court