

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

D19332  
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Submitted - February 1, 2008

PETER B. SKELOS, J.P.  
STEVEN W. FISHER  
JOSEPH COVELLO  
RANDALL T. ENG, JJ.

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2007-01988

DECISION & ORDER

Emily Richardson, et al., plaintiffs-respondents,  
v New York City Transit Authority, etc., defendant,  
City of New York, appellant, Fedcap Rehabilitation  
Services, Inc., defendant-respondent.

(Index No. 15541/05)

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Wallace D. Gossett, Brooklyn, N.Y. (Lawrence Heisler of counsel), for appellant and  
defendant New York City Transit Authority.

McMahon, Martine & Gallagher, LLP, New York, N.Y. (Patrick Brophy of counsel),  
for plaintiffs-respondents.

Hoey, King, Toker & Epstein (Mischel & Horn, P.C., New York, N.Y. [Scott T.  
Horn], of counsel), for defendant-respondent.

In an action to recover damages for personal injuries, the defendant City of New York  
appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Hinds-  
Radix, J.), dated February 16, 2007, as denied that branch of its motion which was for summary  
judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs  
payable to the respondents appearing separately and filing separate briefs.

“A party should be afforded a reasonable opportunity to conduct discovery prior to  
the determination of a motion for summary judgment” (*Amico v Melville Volunteer Fire Co., Inc.*,

May 20, 2008

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39 AD3d 784; *see Venables v Sagona*, 46 AD3d 672; *Fazio v Brandywine Realty Trust*, 29 AD3d 939). Since the plaintiffs and the defendant Fedcap Rehabilitation Services, Inc., have not had an adequate opportunity to conduct discovery, the Supreme Court properly denied the motion of the defendant City of New York with leave to renew after depositions are conducted.

SKELOS, J.P., FISHER, COVELLO and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court