

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

D19471  
Y/kmg

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Submitted - May 6, 2008

STEVEN W. FISHER, J.P.  
DAVID S. RITTER  
ANITA R. FLORIO  
EDWARD D. CARNI, JJ.

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2007-05237

DECISION & ORDER

Daniel Finkelstein, etc., et al., appellants,  
v Philip M. Dietrich, et al., respondents.

(Index No. 24992/06)

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Akin & Smith, LLC, New York, N.Y. (Ismail S. Sekendiz of counsel), for appellants.

Donald R. Schechter, Kew Gardens, N.Y., for respondents.

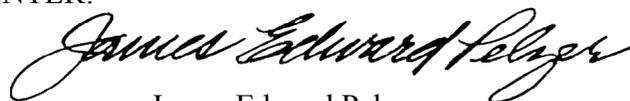
In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Queens County (Kitzes, J.), dated May 4, 2007, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

In response to the defendants' demonstration of their entitlement to judgment as a matter of law, the plaintiffs raised a triable issue of fact as to whether the defendant Philip Dietrich was the man who squirted the infant plaintiff with water, allegedly causing him to fall and injure himself.

FISHER, J.P., RITTER, FLORIO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

June 3, 2008

FINKELSTEIN v DIETRICH