

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

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Submitted - May 22, 2008

STEVEN W. FISHER, J.P.  
EDWARD D. CARNI  
WILLIAM E. McCARTHY  
ARIEL E. BELEN, JJ.

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2007-05016

DECISION & ORDER

Roman Chernin, respondent, v New York City  
Metropolitan Transit Authority, et al., appellants  
(and a third-party action).

(Index No. 32126/04)

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Wallace D. Gossett (Steven S. Efron, New York, N.Y., of counsel), for appellants.

Michael C. Director (Shandell, Blitz, Blitz & Ashley, LLP, New York, N.Y. [Stewart G. Milch], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (D. Schmidt, J.), dated April 27, 2007, which denied that branch of their motion which was for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

In support of that branch of their motion which was for summary judgment dismissing the complaint, the defendants failed to meet their prima facie burden of establishing entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Viewing the evidence in the light most favorable to the plaintiff and drawing all reasonable inferences in his favor (*see Negri v Stop & Shop*, 65 NY2d 625, 626; *Robinson Motor Xpress, Inc. v HSBC Bank, USA*, 37 AD3d 117, 119), the plaintiff's deposition testimony, which the defendants submitted in support of their motion, raised an issue of fact as to whether the defendants' bus operator was negligent in stopping the subject bus in the crosswalk (*see* 34 RCNY 4-03[a][3][I], 4-08[e][5]; *see also Schneider v Diallo*, 14 AD3d 445). Further, the

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plaintiff's deposition testimony raised a question of fact as to whether the location of the bus in the middle of the crosswalk, which allegedly blocked his view of oncoming traffic, including the van that struck him, was a proximate cause of his injuries (*see Derdarian v Felix Contr. Corp.*, 51 NY2d 308, 314; *Thomas v Vezza*, 29 AD3d 678; *Jordan v Aviles*, 288 AD2d 347; *Dery v DeCostole Carting*, 281 AD2d 508, 509; *Perry v Pelersi*, 261 AD2d 780; *Sullivan v Locastro*, 178 AD2d 523, 525).

FISHER, J.P., CARNI, McCARTHY and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court