

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

D19958
G/prt

_____AD3d_____

Argued - June 3, 2008

PETER B. SKELOS, J.P.
HOWARD MILLER
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2008-01649

DECISION & ORDER

Richard Volino, appellant, v Long
Island Railroad Company, respondent.

(Index No. 27388/05)

Mark J. Rayo, P.C., Brooklyn, N.Y. (Louis A. Badolato of counsel), for appellant.

Lewis Johs Avallone Aviles, LLP, Riverhead, N.Y. (Brian J. Greenwood of counsel),
for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Schulman, J.), entered January 28, 2008, which denied that branch of his motion which was for post-note of issue discovery.

ORDERED that the order is reversed, on the facts and in the exercise of discretion, without costs or disbursements, and that branch of the plaintiff's motion which was for post-note of issue discovery is granted.

Upon the particular circumstances of this case it was an improvident exercise of discretion to deny that branch of the plaintiff's motion which was for post-note of issue discovery (*see* 22 NYCRR 202.21[d]).

SKELOS, J.P., MILLER, CARNI and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

July 8, 2008

VOLINO v LONG ISLAND RAILROAD COMPANY