

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

D20439  
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Argued - September 5, 2008

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
JOSEPH COVELLO  
JOHN M. LEVENTHAL, JJ.

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2006-10907

DECISION & ORDER

Sandra Texeria, respondent, v BAB Nuclear  
Radiology, P.C., et al., appellants, et al., defendants.

(Index No. 15269/05)

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Bartlett, McDonough, Bastone & Monaghan, LLP, White Plains, N.Y. (Edward J. Guardaro, Jr., Gina B. DiFolco, and Adonaid Casado of counsel), for appellants.

Kramer & Dunleavy, LLP, New York, N.Y. (Lenore Kramer of counsel), for respondent.

In an action to recover damages for medical malpractice, the defendants BAB Nuclear Radiology, P.C., Stuart Katz, and Paul Bonheim appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Burke, J.), entered October 17, 2006, as denied that branch of their motion which was for summary judgment dismissing, as time-barred, so much of the complaint as was based upon their alleged acts of medical malpractice committed prior to January 1, 2003.

ORDERED that the order is affirmed insofar as appealed from, with costs.

On their motion for summary judgment, the appellants established their prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), by demonstrating that any medical malpractice claims based upon alleged acts they committed prior to January 1, 2003, were time-barred (*see CPLR 214-a*). However, in opposition, the plaintiff raised a triable issue of fact as to whether the statute of limitations was tolled by the continuous treatment doctrine (*see Cherise v Braff*, 50 AD3d 724, 726; *Mosezhnik v Berenstein*, 33 AD3d 895, 896).

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Accordingly, the Supreme Court properly denied that branch of the appellants' motion which was for summary judgment dismissing, as time-barred, so much of the complaint as was based upon their alleged acts of medical malpractice committed prior to January 1, 2003.

MASTRO, J.P., SKELOS, COVELLO and LEVENTHAL, 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