

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

D22544  
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Argued - February 3, 2009

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
HOWARD MILLER  
RUTH C. BALKIN, JJ.

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2008-04598

DECISION & ORDER

Lawrence Larrier, etc., et al., plaintiffs-respondents,  
v Gateway Sherman, Inc., appellant, Renaissance  
Equity Holdings, LLC, defendant-respondent.

(Index No. 12623/07)

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Shafer Glazer, LLP, New York, N.Y. (Timothy M. Wenk of counsel), for appellant.

Lee A. Fine (James M. Sheridan, Jr., Brooklyn, N.Y., of counsel), for plaintiffs-respondents.

Russo, Keane & Toner, LLP, New York, N.Y. (Thomas F. Keane of counsel), for defendant-respondent.

In an action to recover damages for personal injuries, the defendant Gateway Sherman, Inc., appeals from an order of the Supreme Court, Kings County (Balter, J.), dated April 16, 2008, which denied its motion, inter alia, for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

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

In view of the limited disclosure conducted, triable issues of fact exist as to whether the alleged defective condition existed at the time of the conveyance of the subject property from the appellant to the defendant Renaissance Equity Holdings, LLC (hereinafter Renaissance), and, if so, whether Renaissance, as the new owner of the property, had a reasonable opportunity prior to the

March 24, 2009

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accident to remedy that condition (*see Bittrolff v Ho's Dev. Corp.*, 77 NY2d 896, 898; *see Kilmer v White*, 254 NY 64; *Gramazio v 370 Lexington Avenue, LLC*, 40 AD3d 303; *Fisher v Braun*, 227 AD2d 586, 587; *Farragher v City of New York*, 26 AD2d 494, 496, *affd on opn below* 21 NY2d 756). Accordingly, resolution of these issues must await further discovery.

SPOLZINO, J.P., RITTER, MILLER and BALKIN, 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