

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

D22768
Y/kmg

_____AD3d_____

Argued - January 5, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2007-03584

DECISION & ORDER

Margarette Wainwright, etc., et al., respondents,
v New York City Health and Hospitals Corporation,
et al., appellants.

(Index No. 24920/01)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein and Julian L. Kalkstein of counsel), for appellants.

Ambus-Russell, P.C., Jericho, N.Y. (Gregory T. Ambus of counsel), for respondents.

In an action to recover damages for negligence, the defendants appeal from an order of the Supreme Court, Queens County (Flug, J.), dated March 16, 2007, as amended March 22, 2007, which granted the plaintiffs' motion for summary judgment on the issue of liability.

ORDERED that the order, as amended, is affirmed, with costs.

After the plaintiffs' decedent, Ernst Moise, passed away, his body was placed in a refrigerated unit at the Queens General Hospital mortuary for five days. The refrigerator malfunctioned and the body became badly decomposed. The plaintiffs commenced this action to recover damages for negligence.

In support of their motion for summary judgment on the issue of liability, the plaintiffs established that prior to the time the decedent was brought to the hospital mortuary, the defendants had actual notice that there were "problems with temperature fluctuations" as registered on the subject refrigerator unit thermometer, and that the defendants failed to identify and/or correct the malfunction. In opposition thereto, the defendants failed to raise a material issue of fact.

Accordingly, the Supreme Court properly granted the plaintiffs' motion for summary judgment on the issue of liability (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320; *see also Estate of Scheur v City of New York*, 10 AD3d 272; *Bambrick v Booth Mem. Med. Cr.*, 190 AD2d 646).

SPOLZINO, J.P., SANTUCCI, LEVENTHAL and CHAMBERS, 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