

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

D25221  
Y/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 30, 2009

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
LEONARD B. AUSTIN  
SHERI S. ROMAN, JJ.

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2008-07359

DECISION & ORDER

Leston Black, et al., respondents, v New York City  
Transit Authority, et al., appellants.

(Index No. 2479/05)

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Wallace D. Gossett, Brooklyn, N.Y. (Lawrence Heisler of counsel), for appellants.

Salenger, Sack, Schwartz & Kimmel, LLP (Pollack, Pollack, Isaac & De Cicco, New  
York, N.Y. [Brian J. Isaac and Michael H. Zhu], of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from  
an order of the Supreme Court, Kings County (Schmidt, J.), dated June 23, 2008, which denied their  
motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On July 13, 2004, the plaintiff Leston Black allegedly fell onto the tracks of a subway  
station in Brooklyn, and was struck by a train entering the station.

The defendants met their initial burden on their motion for summary judgment  
dismissing the complaint by submitting evidence sufficient to demonstrate, prima facie, that the  
defendant train operator could not have stopped the train in time to avoid the accident (*see Stanley  
v New York City Tr. Auth.*, 45 AD3d 832, 833; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320,  
324). In opposition, however, the plaintiffs submitted sufficient evidence to raise triable issues of fact  
as to how long the injured plaintiff was on the train tracks prior to being struck by the train and

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whether the train operator could have stopped the train in time to avoid the accident (*see Stanley v New York City Tr. Auth.*, 45 AD3d at 833; *see also Zuckerman v City of New York*, 49 NY2d 557, 562).

SKELOS, J.P., ENG, AUSTIN and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court