

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

D23572
T/cb

_____AD3d_____

Argued - April 24, 2009

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2007-11118

DECISION & ORDER

Rosemate Lohier Chery, appellant, v Jamaica
Buses, Inc., respondent.

(Index No. 6326/05)

Friedman, Khafif & Sanchez, LLP (Arnold E. DiJoseph III, New York, N.Y., of
counsel), for appellant.

Fiedelman & McGaw, Jericho, N.Y. (Dawn C. DeSimone of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a
judgment of the Supreme Court, Queens County (Rosengarten, J.), entered October 17, 2007, which,
upon the denial of her motion pursuant to CPLR 4401 for judgment as a matter of law, and upon a
jury verdict finding the defendant was not at fault in the happening of the accident, is in favor of the
defendant and against her dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

The plaintiff commenced this action against Jamaica Buses, Inc., to recover damages
for injuries she sustained when, after her hand was caught in the door of a bus, she fell to the ground
and the front wheel of the bus rolled over her hand. After the first trial of the action, the Supreme
Court granted the plaintiff's motion pursuant to CPLR 4404(a) to set aside the verdict as inconsistent
because the jury found that the defendant was negligent but that its actions were not the proximate
cause of the plaintiff's injuries, and granted a new trial.

The Supreme Court properly denied the plaintiff's motion for judgment as a matter

June 16, 2009

Page 1.

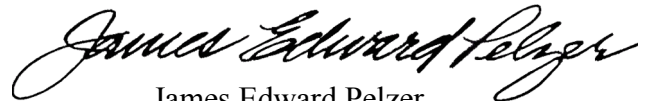
CHERY v JAMAICA BUSES, INC.

of law made at the end of the second trial.

The plaintiff's remaining contentions are either not properly before this court, unpreserved for appellate review, or without merit.

RIVERA, J.P., SANTUCCI, CHAMBERS and HALL, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court