

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

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Submitted - September 29, 2006

FRED T. SANTUCCI, J.P.
WILLIAM F. MASTRO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2005-04537

DECISION & ORDER

Charles E. Gallagher, et al., respondents, v
Kucker & Bruh, LLP, et al., appellants.

(Index No. 19405/04)

Kucker & Bruh, LLP, New York, N.Y. (John M. Churneftsky, Louis L. Nock, and
Saul D. Bruh, pro se, of counsel), appellant pro se and for appellant Saul D. Bruh.

Charles E. Gallagher, Pelham Manor, N.Y., Stephanie Gallagher, Pelham Manor,
N.Y., and Charles D. Brown, as Executor of the Estate of John S. Rogers, New York,
N.Y., respondents pro se (one brief filed).

In an action, inter alia, to recover damages for libel, the defendants appeal from so much of an order of the Supreme Court, Westchester County (Colabella, J.), entered April 18, 2005, as denied that branch of their motion pursuant to CPLR 3211(a)(7) which was to dismiss the first cause of action to recover damages for libel.

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

On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true, and according the plaintiff the benefit of every possible inference (*see Leon v Martinez*, 84 NY2d 83, 87; *Gjonlekaj v Sot*, 308 AD2d 471, 473).

Applying these principles to the case at bar, the allegation that the letter written by the defendant Saul D. Bruh contained defamatory statements were sufficient to state a cause of

November 8, 2006

Page 1.

GALLAGHER v KUCKER & BRUH, LLP

action. Accordingly, the Supreme Court properly denied that branch of the motion pursuant to CPLR 3211(a)(7) which was to dismiss the first cause of action to recover damages for libel.

SANTUCCI, J.P., MASTRO, FISHER and DILLON, 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