

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

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Submitted - October 19, 2006

A. GAIL PRUDENTI, P.J.
ROBERT W. SCHMIDT
MARK C. DILLON
JOSEPH COVELLO, JJ.

2005-06377

DECISION & ORDER

Doron Avgush, appellant, v Town of Yorktown,
respondent.

(Index No. 00-15641)

Doron Avgush, Bronx, N.Y., appellant pro se.

Goldberg Segalla, LLP, White Plains, N.Y. (Kevin Burns of counsel), for respondent.

In an action, inter alia, to recover damages for malicious prosecution, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Barone, J.), entered May 12, 2005, as, upon renewal, adhered to a prior determination in an order entered March 3, 2005, granting that branch of the defendant's motion which was for summary judgment dismissing the cause of action to recover damages for malicious prosecution.

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

The defendant established its entitlement to summary judgment dismissing the malicious prosecution cause of action by demonstrating that the underlying criminal proceeding was not terminated in favor of the plaintiff (*see MacFawn v Kresler*, 88 NY2d 859, 860; *De Cicco v Madison County*, 300 AD2d 706; *Ellsworth v City of Gloversville*, 269 AD2d 654). The underlying criminal proceeding in this matter was terminated as a result of the facial insufficiency of the criminal information and not on the merits of the matter (*see MacFawn v Kresler, supra*). In opposition, the

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plaintiff failed to raise a triable issue of fact. Accordingly, upon renewal, the Supreme Court properly adhered to its prior determination (*see MacFawn v Kresler, supra; Cahill v County of Nassau*, 17 AD3d 497; *Tzambazis v City of New York*, 291 AD2d 397).

PRUDENTI, P.J., SCHMIDT, DILLON and COVELLO, 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