

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

D12966  
E/mv

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Argued - November 20, 2006

THOMAS A. ADAMS, J.P.  
DAVID S. RITTER  
STEVEN W. FISHER  
JOSEPH COVELLO, JJ.

2006-02189

DECISION & ORDER

Peerless Abstract Corp., et al., respondents,  
v Regina Seltzer, appellant, et al., defendants.

(Index No. 21613/04)

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Gloria May Rosenblum, East Islip, N.Y., for appellant.

Harvey B. Besunder, P.C., Islandia, N.Y. (Marissa R. Dubey and Elizabeth Weilhoefer of counsel), for respondents.

In an action to recover damages for abuse of process, the defendant Regina Seltzer appeals from an order of the Supreme Court, Suffolk County (Costello, J.), dated February 28, 2006, which denied her separate motions (1) pursuant to CPLR 5015(a)(3) to vacate so much of an order of the same court dated January 7, 2005, as granted that branch of the plaintiffs' motion which was for summary judgment against her on the issue of liability, (2) pursuant to CPLR 5019(a) and CPLR 2002 to correct an alleged mistake in the order dated January 7, 2005, and (3), in effect, for summary judgment dismissing the complaint insofar as asserted against her.

ORDERED that the appeal from so much of the order dated February 28, 2006, as denied the motion pursuant to CPLR 5015(a)(3) to vacate and denied the motion pursuant to CPLR 5019(a) and CPLR 2002 to correct an alleged mistake is dismissed, as academic; and it is further,

ORDERED that the order dated February 28, 2006, is reversed insofar as reviewed, on the law, the motion for summary judgment dismissing the complaint insofar as asserted against the appellant is granted, and so much of the order dated January 7, 2005, as granted that branch of the motion which was for summary judgment against the appellant on the issue of liability is vacated; and it is further,

December 5, 2006

Page 1.

ORDERED that one bill of costs is awarded to the appellant.

In support of her motion for summary judgment dismissing the complaint insofar as asserted against her, the defendant Regina Seltzer demonstrated, prima facie, that the action was time barred (*see* CPLR 215[3]; *Bittner v Cummings*, 188 AD2d 504). In opposition, the plaintiffs failed to raise a triable issue of fact. Thus, the Supreme Court should have granted the motion.

In view of the foregoing, the appellant's remaining contentions have been rendered academic.

ADAMS, J.P., RITTER, FISHER 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