

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

D14134
C/mv

_____AD3d_____

Submitted - January 26, 2007

ROBERT W. SCHMIDT, J.P.
GABRIEL M. KRAUSMAN
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-02030

DECISION & ORDER

Expert Metal Slitters Corp., respondent,
v John Joseph Maniaci, etc., appellant.

(Index No. 5641/04)

Davoli & Vesnaver, LLP, Baldwin, N.Y. (Susan R. Nudelman and Bernard W. Hylan of counsel), for appellant.

Sullivan & Sullivan, Garden City, N.Y. (Joseph D. Sullivan of counsel), for respondent.

In an action, inter alia, to recover damages for moneys allegedly converted by the defendant's decedent, the defendant appeals from a judgment of the Supreme Court, Queens County (Leviss, J.H.O.), entered February 2, 2006, which, after a nonjury trial, is in favor of the plaintiff and against him in the principal sum of \$40,062.73.

ORDERED that the judgment is affirmed, with costs.

After a nonjury trial, the trial court determined that the defendant's decedent, who was the plaintiff's bookkeeper, and who had access to the plaintiff's checks, had converted \$40,062.73 of the plaintiff's funds by forging the signature of the president of the plaintiff on 35 of the plaintiff's checks, and using them to pay for the premiums on an insurance policy that was "[f]or" the decedent. Contrary to the defendant's contentions, the court's determination was not only supported by legally sufficient evidence (*see Cohen v Hallmark Cards, Inc.*, 45 NY2d 493, 499), but was also warranted by the facts (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499).

April 24, 2007

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The defendant's remaining contentions are without merit.

SCHMIDT, J.P., KRAUSMAN, COVELLO and BALKIN, 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