

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

D14248
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_____AD3d_____

Argued - February 15, 2007

WILLIAM F. MASTRO, J.P.
GABRIEL M. KRAUSMAN
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2006-04646

DECISION & ORDER

Crowe Deegan, LLP, respondent, v Peter J.
Schmitt, appellant.

(Index No. 447/04)

Snitow Kanfer Holtzer & Millus, LLP, New York, N.Y. (Paul F. Millus and Virginia
K. Trunkes of counsel), for appellant.

Crowe Deegan, LLP, Glen Cove, N.Y. (Daniel P. Deegan of counsel), respondent pro
se.

In an action, inter alia, to recover damages for defamation, the defendant appeals from an order of the Supreme Court, Nassau County (Lally, J.), entered April 14, 2006, which denied his motion for summary judgment dismissing the complaint.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying that branch of the defendant's motion which was for summary judgment dismissing so much of the third cause of action as alleged defamation, libel, and libel per se, based on the challenged statement appearing in the *Newsday* article dated February 29, 2004, and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed, with costs to the plaintiff.

The challenged statement appearing in the *Newsday* article dated February 29, 2004, made by the defendant during the course of a legislative hearing, is entitled to absolute privilege (*see Park Knoll Assoc. v Schmidt*, 59 NY2d 205, 209; *Schettino v Alter*, 140 AD2d 600, 601-602).

March 13, 2007

CROWE DEEGAN, LLP v SCHMITT

Page 1.

In response to the defendant's showing of his prima facie entitlement to summary judgment dismissing the remainder of the complaint (*see Alvarez v Prospect Hosp.*, 68 NY2d 320), the plaintiff demonstrated the existence of an issue of fact from which a reasonable jury could find "actual malice with convincing clarity" (*Bose Corp. v Consumers Union of United States, Inc.*, 466 US 485, 514; *see New York Times Co. v Sullivan*, 376 US 254, 279-280; *Prozeralik v Capital Cities Communications*, 82 NY2d 466, 474-475).

The defendant's remaining contentions are without merit.

MASTRO, J.P., KRAUSMAN, FLORIO 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