

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

D14429  
G/gts

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Submitted - February 20, 2007

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
DAVID S. RITTER  
MARK C. DILLON, JJ.

2005-09607

DECISION & ORDER

DePodwin & Murphy, respondent, v  
Vilair Fonvil, appellant.

(Index No. 04-02736)

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William A. Gerard, Palisades, N.Y., for appellant.

DePodwin & Murphy, Nanuet, N.Y. (Phillip J. Murphy of counsel), respondent pro se.

In an action to recover an attorney's fee, the defendant appeals from a judgment of the Supreme Court, Rockland County (Sherwood, J.), entered August 15, 2005, which, inter alia, upon an order of the same court dated July 28, 2005, granting the plaintiff's motion for summary judgment, is in favor of the plaintiff and against him in the principal sum of \$70,659.37.

ORDERED that the judgment is affirmed, with costs.

Contrary to the defendant's contention, the Supreme Court properly granted the plaintiff's motion for summary judgment. In opposition to the plaintiff's prima facie showing of its entitlement to judgment as a matter of law, the defendant failed to submit evidence in admissible form establishing the existence of a triable issue of fact as to whether the plaintiff was entitled to recover legal fees which were incurred pursuant to a written agreement between the parties (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562). Mere conclusory allegations, unsubstantiated assertions, or speculation may not defeat a motion for summary judgment (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Carleton Studio, Ltd. v MONY Life Ins. Co.*, 18 AD3d 491, 492; *Leggio v Gearhart*, 294 AD2d 543, 544).

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Accordingly, the plaintiff's motion for summary judgment was properly granted (*see Alvarez v Prospect Hosp., supra* at 324).

The appellant's remaining contentions are without merit.

MILLER, J.P., SPOLZINO, RITTER and DILLON, 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