

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

D14988
C/gts

_____AD3d_____

Argued - March 26, 2007

ROBERT A. SPOLZINO, J.P.
GABRIEL M. KRAUSMAN
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2006-05800

DECISION & ORDER

Inez Cain, respondent, v
Sidney M. Segall, appellant.

(Index No. 13017/00)

Sidney M. Segall, Port Washington, N.Y., appellant pro se.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Michael T. Colavecchio and Milton Thurm of counsel), for respondent.

In an action to recover damages for battery, the defendant appeals from an order of the Supreme Court, Kings County (Schack, J.), dated May 2, 2006, which denied, without a hearing, his motion to impose costs and sanctions on the plaintiff and/or her attorney for engaging in frivolous conduct within the meaning of 22 NYCRR § 130-1.1.

ORDERED that the order is affirmed, with costs.

Contrary to the defendant's contentions on appeal, the Supreme Court did not improvidently exercise its discretion in denying, without a hearing, his motion to impose costs and sanctions on the plaintiff and/or her attorney for engaging in frivolous conduct within the meaning of 22 NYCRR § 130-1.1 (*cf. Hampton v Hampton*, 261 AD2d 362). The record does not support the defendant's argument that the prosecution of this action to recover damages for civil battery,

although ultimately unsuccessful, was frivolous (*see generally Wende C. v United Methodist Church, N.Y.W. Area*, 4 NY3d 293; *Laurie Marie M. v Jeffrey T. M.*, 159 AD2d 52, *affd* 77 NY2d 981; PJI 3:3).

SPOLZINO, J.P., KRAUSMAN, SKELOS and DICKERSON, 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