

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

D15488
G/cb

_____AD3d_____

Argued - April 10, 2007

ROBERT A. SPOLZINO, J.P.
STEVEN W. FISHER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2006-06855

DECISION & ORDER

Stuart E. Meltzer, respondent, v Pamela Meltzer,
appellant.

(Index No. 1869/06)

Karen G. Brand, P.C., Manhasset, N.Y., for appellant.

Stuart E. Meltzer, P.C., Brooklyn, N.Y., for respondent.

In an action, inter alia, to recover damages for false arrest and false imprisonment, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Jonas, J.), dated June 9, 2006, as denied that branch of her motion which was pursuant to CPLR 3211(a)(7) to dismiss the cause of action to recover damages for false arrest and false imprisonment.

ORDERED that the order is affirmed insofar as appealed from, with costs.

On a motion pursuant to CPLR 3211(a)(7) to dismiss a cause of action, a court must accept the facts alleged in support of that cause of action as true, and accord the plaintiff the benefit of every favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87-88). If the facts as alleged do not fit within any cognizable legal theory, the cause of action must be dismissed (*id.* at 88).

Contrary to the defendant's contention, she failed to provide evidence that conclusively established that the plaintiff did not have a cause of action to recover damages for false arrest and false imprisonment. Thus, the Supreme Court correctly denied that branch of her motion

which was to dismiss that cause of action (*see Quesada v Global Land, Inc.*, 35 AD3d 575, 576; *Stabrite Servs., Inc. v Sutton*, 17 AD3d 570, 571; *Allstate Ins. Co. v Raguzin*, 12 AD3d 468, 469).

SPOLZINO, J.P., FISHER, COVELLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court