

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

D15636
O/nl

_____AD3d_____

Argued - May 17, 2007

A. GAIL PRUDENTI, P.J.
FRED T. SANTUCCI
JOSEPH COVELLO
EDWARD D. CARNI, JJ.

2004-08756

DECISION & ORDER

Goldsmith Motors Corp., respondent,
v Chemical Bank, appellant.

(Index No. 16310/94)

Tromello, McDonnell & Kehoe, Melville, N.Y. (James S. Kehoe of counsel), for appellant.

Steven R. Haffner, Bayside, N.Y., for respondent.

In an action to recover damages for libel arising out of the wrongful dishonor of checks, the defendant appeals, as limited by its brief, from stated portions of an order of the Supreme Court, Queens County (LeVine, J.), dated June 28, 2004, which, inter alia, denied those branches of its cross motion which were to dismiss the complaint based on spoliation of evidence or, in the alternative, for summary judgment dismissing the complaint and denied, in effect, without prejudice to renewal before the trial court, that branch of its cross motion which was to preclude the plaintiff from calling its expert witness to testify at trial.

ORDERED that the appeal is dismissed, with costs.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248;

June 19, 2007

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GOLDSMITH MOTORS CORP. v CHEMICAL BANK

Goldsmith Motors Corp. v Chemical Bank, _____AD3d_____ [Appellate Division Docket No. 2005-11155, decided herewith].

PRUDENTI, P.J., SANTUCCI, COVELLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court