

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

D16641
Y/cb

_____AD3d_____

Argued - October 2, 2007

ROBERT W. SCHMIDT, J.P.
STEVEN W. FISHER
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-10879

DECISION & ORDER

Aleksandr Posokhov, respondent, v Gregory Oselkin,
appellant.

(Index No. 1172/03)

Kolenovsky, Spiegel & Caputo, LLP, New York, N.Y. (William S. Spiegel of
counsel), for appellant.

In an action to recover damages for dental malpractice, the defendant appeals from an order of the Supreme Court, Kings County (Levine, J.), dated September 8, 2006, which denied his renewed motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's renewed motion for summary judgment dismissing the complaint is granted.

“The requisite elements of proof in a medical or dental malpractice action are deviation or departure from accepted practice and evidence that such departure was a proximate cause of injury or damage” (*Calabro v Heschels*, 22 AD3d 622). The defendant's submissions on his motion for summary judgment, including the affirmation of his dental expert, established a prima facie case that his treatment of the plaintiff was not negligent or a proximate cause of the plaintiff's alleged injuries, thereby shifting to the plaintiff the obligation to show by sufficient evidentiary proof the existence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The conclusory and unsupported allegations of dental malpractice contained in the affirmation prepared by the plaintiff's

expert, submitted in opposition, were insufficient to defeat the defendant's renewed motion (*see Alvarez v Prospect Hosp.*, 68 NY2d at 325).

SCHMIDT, J.P., FISHER, LIFSON and CARNI, 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