

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

D18472
O/kmg

_____AD3d_____

Submitted - February 13, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-01952

DECISION & ORDER

Laurentino Rodrigues, appellant,
v Frank Occhipinti, respondent.

(Index No. 6211/05)

Castro & Remer, P.C., Ossining, N.Y. (Daniel V. Remer of counsel), for appellant.

In an action to recover damages for slander, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Colabella, J.), entered January 11, 2007, as granted that branch of the defendant's motion which was for an award of costs pursuant to 22 NYCRR 130-1.1.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court providently exercised its discretion in granting that branch of the defendant's motion which was for costs against the plaintiff for engaging in frivolous conduct. Conduct is frivolous if "it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another" (22 NYCRR 130-1.1[c][2]). Inasmuch as the plaintiff admitted that after commencing the action he no longer wanted to pursue it and took no steps to discontinue the action, awarding costs to the defendant to reimburse him for actual expenses and attorney's fees reasonably incurred to defend against and to obtain dismissal of the action was proper (see 22 NYCRR 130-1.1[a]; *Moran v Regency Savings Bank, F.S.B.*, 20 AD3d 305, 306-307; *Timoney v Newmark & Co. Real Estate, Inc.*, 299 AD2d 201, 202; *Janitschek v Trustees of Friends World College*, 249 AD2d 368, 369; cf. *Juron & Minzner, P.C. v State Farm Ins. Co.*, 303 AD2d 463).

March 18, 2008

Page 1.

RODRIGUES v OCCHIPINTI

Furthermore, the Supreme Court properly articulated the basis for its determination pursuant to 22 NYCRR 130-1.2.

The plaintiff's remaining contention is without merit.

SKELOS, J.P., SANTUCCI, COVELLO, McCARTHY and CHAMBERS, 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