

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

D22921  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 17, 2009

PETER B. SKELOS, J.P.  
STEVEN W. FISHER  
HOWARD MILLER  
RANDALL T. ENG, JJ.

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2007-06317

DECISION & ORDER

Globe Surgical Supply, as assignee of Charles Charlotin, etc., appellant, v Allstate Insurance Company, respondent.

(Index No. 9018/04)

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Locks Law Firm PLLC, New York, N.Y. (Andrew P. Bell and Seth R. Lesser of counsel), Thomas W. Alfano, Garden City, N.Y., and Belesi & Conroy, P.C., Garden City, N.Y. (John M. Belesi of counsel), for appellant (one brief filed).

Short & Billy, P.C., New York, N.Y. (Skip Short and Sonnenschein Nath & Rosenthal LLP [Steven Michael Levy, pro hac vice], of counsel), and Wiggin and Dana LLP, New York, N.Y. (Charles Platto of counsel), for respondent (one brief filed).

In an action to recover damages for breach of contract, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Woodard, J.), entered April 26, 2007, as denied that branch of its motion which was to certify a class pursuant to CPLR article 9.

ORDERED that the order is modified, on the law and in the exercise of discretion, by adding the words “without prejudice to renewal of the motion” following the words “class action certification is DENIED”; as so modified, the order is affirmed, with costs to the plaintiff.

This action is in all material respects identical to *Globe Surgical Supply v GEICO Ins. Co.* (59 AD3d 129). As in that case, and for the reasons stated therein, Globe Surgical Supply, as

April 21, 2009

Page 1.

GLOBE SURGICAL SUPPLY, as assignee of CHARLES CHARLOTIN  
v ALLSTATE INSURANCE COMPANY

assignee of Charles Charlotin, met all of the class certification prerequisites in the instant matter except adequacy of representation (*see* CPLR 901[a][4]). Accordingly, that branch of its motion which was to certify a class action should have been denied without prejudice to renewal (*see Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129).

SKELOS, J.P., FISHER, MILLER and ENG, 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