

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

D23678
O/prt

_____AD3d_____

Argued - May 28, 2009

FRED T. SANTUCCI, J.P.
JOSEPH COVELLO
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2007-09992

DECISION & ORDER

Hendrika Vandermulen, appellant, v Fidelity National
Title Insurance Company, et al., respondents.

(Index No. 26227/06)

Irwin Popkin, Shirley, N.Y., for appellant.

Herrick, Feinstein, LLP, New York, N.Y. (Arthur G. Jakoby and M. Darren Traub
of counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County (Emerson, J.), as granted those branches of the defendants' motion which were to dismiss the causes of action alleging negligence, a violation of General Business Law § 349, fraud, and malpractice.

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

Contrary to the plaintiff's contentions, the Supreme Court properly determined that the complaint failed to state a cause of action alleging a violation of General Business Law § 349 (*see* CPLR 3211[a][7]; *see generally* *Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, NA*, 85 NY2d 20; *Sussman v Grado*, 192 Misc 2d 628, 634).

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The plaintiff's remaining contentions are without merit.

SANTUCCI, J.P., COVELLO, LEVENTHAL and BELEN, 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