

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

D24037
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_____AD3d_____

Argued - May 7, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-11305

DECISION & ORDER

Petro Horbul, respondent, v Mercury Insurance
Group, et al., appellants.

(Index No. 9923/08)

Picciano & Scahill, P.C., Westbury, N.Y. (Jason Tenenbaum of counsel), for
appellants.

Votto & Cassata, LLP, Staten Island, N.Y. (Christopher J. Albee of counsel), for
respondent.

In an action to recover damages for slander per se, the defendants appeal, as limited
by their brief, from so much of an order of the Supreme Court, Kings County (Balter, J.), dated
November 19, 2008, as denied that branch of their motion which was pursuant to CPLR 3211(a)(7)
to dismiss the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,
and that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the
complaint is granted.

The plaintiff alleged in the complaint that the defendants committed slander per se
when they reported to the police that the plaintiff had filed a fraudulent claim with them for no-fault
medical benefits for his son. However, the complaint failed to comply with CPLR 3016(a), which
requires that a complaint sounding in defamation "set forth 'the particular words complained of'"
(*Simpson v Cook Pony Farm Real Estate, Inc.*, 12 AD3d 496, 497, quoting CPLR 3016[a]; *see*
Fusco v Fusco, 36 AD3d 589). Compliance with CPLR 3016(a) is strictly enforced (*see Abe's*

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Rooms, Inc. v Space Hunters, Inc., 38 AD3d 690). Accordingly, that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action should have been granted.

SPOLZINO, J.P., ANGIOLILLO, LEVENTHAL and LOTT, 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