

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

D18759
X/kmg

_____AD3d_____

Submitted - February 19, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2006-09662

DECISION & ORDER

George W. Benedict, respondent,
v Richard Decker, appellant.

(Index No. 27495/00)

David Lee Heller, Sag Harbor, N.Y., for appellant.

O'Shea, Marcincuk & Bruyn, LLP, Southampton, N.Y. (Joseph Lisa of counsel), for
respondent.

In an action to recover on promissory notes, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Cohalan, J.), dated January 31, 2006, as granted that branch of the plaintiff's motion which was pursuant to CPLR 3211(a)(5) to dismiss the defendant's counterclaim for libel as time-barred.

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

The Supreme Court properly dismissed the defendant's counterclaim for libel as time-barred. Contrary to the defendant's contention, his counterclaim for libel did not arise from "the transactions, occurrences, or series of transactions or occurrences" upon which the claims asserted in the complaint depend, such that it was timely interposed (CPLR 203[d]; *see Messinger v Mount Sinai Med. Gr.*, 279 AD2d 344, 345). The newspaper article containing the alleged libelous statements related to credit card fraud and misappropriation of company funds which were the subject of a criminal case against the defendant, and the instant complaint focuses on promissory notes representing loans made to the defendant by the plaintiff (*cf. Bloomfield v Bloomfield*, 97 NY2d 188, 193; *United States Fid. & Guar. Co. v Delmar Dev. Partners, LLC*, 22 AD3d 1017, 1020).

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The defendant's remaining contentions are without merit.

SKELOS, J.P., LIFSON, SANTUCCI and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court