

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

D24003
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_____AD3d_____

Argued - June 22, 2009

PETER B. SKELOS, J.P.
MARK C. DILLON
JOSEPH COVELLO
ARIEL E. BELEN, JJ.

2008-03657

DECISION & ORDER

Joseph DeNatale, appellant, v Michael G. Santangelo,
etc., et al., defendants, Ronald A. Ball, etc., et al.,
respondents.

(Index No. 6486/07)

Steven A. Hershkowitz, P.C., Forest Hills, N.Y., for appellant.

Furman Kornfeld & Brennan LLP, New York, N.Y. (A. Michael Furman and Melissa
A. Manning of counsel), for respondent.

In an action to recover damages for legal malpractice, the plaintiff appeals from an order of the Supreme Court, Westchester County (Colabella, J.), entered February 28, 2008, which granted the motion of the defendants Ronald A. Ball, Wayne N. Rubin, and Ball & Rubin, LLP, to dismiss the complaint insofar as asserted against them pursuant to CPLR 3211(a).

ORDERED that the order is affirmed, with costs.

To establish a cause of action to recover damages for legal malpractice, a plaintiff must prove “that the defendant-attorney failed to exercise that degree of care, skill, and diligence commonly possessed by a member of the legal community,” and “that the defendant-attorney’s negligence was a proximate cause of damages” (*Barnett v Schwartz*, 47 AD3d 197, 203-204).

The retainer agreement prepared by the defendant law firm, and executed by the plaintiff, recited that the firm’s representation of the plaintiff was limited to the defense of a civil action to recover damages for assault and battery, and the prosecution of a counterclaim against one individual, and not to the prosecution of counterclaims or separate plenary actions against other

September 8, 2009

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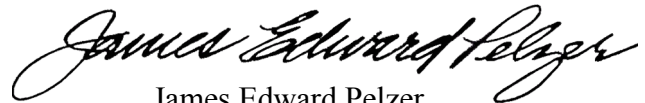
individuals or entities (*see Peak v Bartlett, Pontiff, Stewart & Rhodes, P.C.*, 28 AD3d 1028). As such, the motion of the law firm and two of its members to dismiss the complaint insofar as asserted against them was properly granted (*see Mountain Lion Baseball v Gaiman*, 263 AD2d 636).

In addition, viewing the complaint in the light most favorable to the plaintiff (*see Leon v Martinez*, 84 NY2d 83, 87-88), it failed to set forth allegations sufficient to state a claim that the negligence of the law firm and its two members was a proximate cause of his failure to obtain a more favorable result in the underlying civil action (*see Barnett v Schwartz*, 47 AD3d at 203-204).

The plaintiff's remaining contentions are without merit.

SKELOS, J.P., DILLON, COVELLO 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