

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

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Argued - October 27, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-10716

DECISION & ORDER

James McCue, respondent, v County of Westchester,
et al., appellants.

(Index No. 4948/03)

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, White Plains, N.Y. (John M. Flannery and Joanna M. Topping of counsel), for appellants.

Vouté, Lohrfink, Magro & Collins, LLP, White Plains, N.Y. (Ralph F. Schoene of counsel), for respondent.

In an action to recover damages pursuant to Labor Law § 201-d for the wrongful termination of employment, the defendants appeal from an order of the Supreme Court, Westchester County (Colabella, J.), entered October 25, 2007, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

The plaintiff claims that the defendants violated Labor Law § 201-d(2)(a) by terminating his employment for attending a political candidate's press conference. Pursuant to Labor Law § 201-d(2)(a), it is unlawful for any employer to discharge an individual from employment because of that individual's "political activities outside of working hours."

The defendants made a prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the political activity which allegedly resulted in the

December 16, 2008

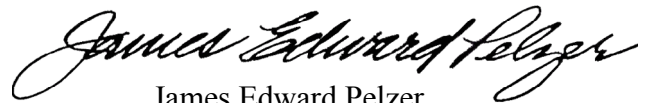
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plaintiff's discharge took place during "working hours" and, thus, was not a protected political activity within the scope of Labor Law § 201-d(2)(a) (*see* Labor Law § 201-d[1][c]). In opposition, the plaintiff failed to raise a triable issue of fact as to whether he engaged in the subject political activity outside of working hours (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562). Accordingly, the defendants' motion for summary judgment dismissing the complaint should have been granted.

RIVERA, J.P., LIFSON, ENG and CHAMBERS, 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