

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

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Argued - February 20, 2007

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
DAVID S. RITTER  
MARK C. DILLON, JJ.

2006-05020  
2007-02293

DECISION & ORDER

Mohamed R. Baksh, appellant, v Town/Village of  
Harrison, etc., respondent.

(Index No. 2238/04)

Mann & Mann, LLP, Port Chester, N.Y. (Monroe Yale Mann of counsel), for  
appellant.

Robert S. Weininger, Rye, N.Y., for respondent.

In an action to recover damages for breach of contract, the plaintiff appeals from (1) an order of the Supreme Court, Westchester County (Colabella, J.), entered January 4, 2006, which granted the defendant's motion for summary judgment dismissing the complaint, and (2) a judgment of the same court dated April 18, 2006, which, upon the order, dismissed the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been considered on appeal from the judgment (*see CPLR 5501[a][1]*).

March 27, 2007

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The plaintiff commenced this action to recover damages for breach of contract after the defendant, upon the termination of the plaintiff's employment, denied his demand for payment of the monetary value of his accrued "compensatory time." The Supreme Court granted the defendant's motion for summary judgment dismissing the complaint. We affirm.

In general, in the absence of a pre-existing contractual provision or legislative enactment, a municipal employee is not entitled to recover the monetary value of accrued credits such as "compensatory time" (see General Municipal Law § 92[1]; *Matter of Karp v North Country Community Coll.*, 258 AD2d 775; *Matter of Rubenstein v Simpson*, 109 AD2d 885; *Dow v Board of Trustees of Farmingdale Pub. Lib.*, 75 AD2d 632). Here, in opposition to the defendant's prima facie demonstration of entitlement to judgment as a matter of law, the plaintiff failed to raise a triable issue of fact. Thus, the defendant was properly granted summary judgment dismissing the complaint.

The plaintiff's remaining contentions are not properly before this court or lack merit.

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court