

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

D16819
W/cb

_____AD3d_____

Argued - October 12, 2007

STEPHEN G. CRANE, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2006-07949

DECISION & ORDER

Behzad Salimi, appellant, v New York Methodist
Hospital., et al., respondents.

(Index No. 39054/04)

Schlam Stone & Dolan, LLP, New York, N.Y. (Michael C. Marcus and Jeffrey M. Eilender of counsel), for appellant.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Ricki E. Roer and Mary T. Hart of counsel), for respondents New York Methodist Hospital, Dean Martin, Robert Rainer, Jason Halper, Osei Soloman, Mark Mundy, and Gillian S. Hans.

Schloss & Schloss, Airmont, N.Y. (Jack Schloss of counsel), for respondents Park Slope Anesthesia Associates, P.C., Joseph Schianodicola, Victorya Gerstheyn and Devasena Manchikalpati.

In an action, inter alia, to recover damages for violation of Labor Law §§ 740 and 741, the plaintiff appeals, as limited by his brief, from stated portions of an order of the Supreme Court, Kings County (Schmidt, J.), dated May 26, 2006, which, among other things, granted that branch of the motion of the defendants New York Methodist Hospital, Dean Martin, Robert Rainer, Jason Halper, Osei Soloman, Mark Mundy, and Gillian S. Hans, which were to dismiss the third cause of action insofar as asserted against them pursuant to CPLR 3211(a)(1), (5), and (7), and those branches of the separate motion of the defendants Park Slope Anesthesia Associates, P.C., Joseph Schianodicola, Victorya Gerstheyn, and Devasena Manchikalpati, which were to dismiss the third cause of action insofar as asserted against the defendants Joseph Schianodicola, Victorya Gerstheyn, and Devasena Manchikalpati pursuant to CPLR 3211(a)(1),(5), and (7).

November 7, 2007

Page 1.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs to the respondents appearing separately and filing separate briefs.

Contrary to the plaintiff's contention, the Supreme Court properly dismissed the third cause of action based upon violation of Labor Law §§ 740 and 741 insofar as asserted against all of the defendants, except Park Slope Anesthesia Associates, P.C. (hereinafter Park Slope), because the plaintiff had no employee-employer relationship with any party other than Park Slope (*see* Labor Law § 740[1][a], 741[1][a]; *Edward M. Stephens, M.D., F.A.A.P. v Prudential Ins. Co. of Am.*, 278 AD2d 16).

The plaintiff's remaining contentions are without merit.

CRANE, J.P., FLORIO, ANGIOLILLO and CARNI, 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