

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

D18373
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_____AD3d_____

Submitted - February 19, 2008

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2006-11797

DECISION & ORDER

Mark Prieto, appellant, v Votation.com, Inc.,
et al., respondents.

(Index No. 8643/06)

Zabell & Associates, P.C., Bohemia, N.Y. (Saul D. Zabell of counsel), for appellant.

Mohen & Treacy LLP, Locust Valley, N.Y. (Thomas P. Mohen and Domenick P. Leonardi of counsel), for respondents.

In an action, inter alia, to recover damages for breach of an employment contract, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated November 2, 2006, as granted those branches of the motion of the defendants Votation.com, Inc., Osan Limited, and Charles Smith pursuant to CPLR 3211 which were to dismiss the first and fourth causes of action to recover damages for breach of an employment contract and fraud, respectively, insofar as asserted against the defendant Votation.com, Inc., and which were to dismiss the complaint insofar as asserted against the defendants Osan Limited and Charles Smith.

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

The Supreme Court properly granted those branches of the defendants' motion pursuant to CPLR 3211 which were to dismiss the first and fourth causes of action to recover damages for breach of an employment contract and fraud, respectively, insofar as asserted against the defendant Votation.com, Inc. (*see* CPLR 3211; *Tiffany at Westbury Condominium v Marelli Dev. Corp.*, 40 AD3d 1073, 1076-1077; *Schenkman v New York Coll. of Health Professionals*, 29 AD3d 671, 672). Furthermore, the complaint was properly dismissed insofar as asserted against the

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defendants Osan Limited and Charles Smith (*see Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 140-141).

The plaintiff's remaining contentions are without merit.

RIVERA, J.P., RITTER, CARNI and LEVENTHAL, 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