

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

D18700
X/prt

_____AD3d_____

Argued - February 25, 2008

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-01288

DECISION & ORDER

Adel El-Hennawy, appellant,
v Davita, Inc., et al., respondents.

(Index No. 11048/04)

Kathleen C. Waterman, New York, N.Y. (Allison Kolins of counsel), for appellant.

Pepper Hamilton, LLP, New York, N.Y. (Angelo A. Stio III of counsel; Matthew H. Adler on the brief), for respondents.

In an action to recover damages for defamation, the plaintiff appeals from an order of the Supreme Court, Richmond County (McMahon, J.), dated December 5, 2006, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

Even though a statement may otherwise be defamatory, it is protected by a qualified privilege where the communication is made to persons who have some common interest in the subject matter (*see Foster v Churchill*, 87 NY2d 744, 751; *Lieberman v Gelstein*, 80 NY2d 429, 437). Here, the defendants established, prima facie, that the allegedly defamatory statements were protected by a qualified privilege and, in opposition, the plaintiff failed to raise a triable issue of fact as to whether the qualified privilege applied (*see Lieberman v Gelstein*, 80 NY2d 429). Accordingly, the court properly granted the defendants' motion for summary judgment dismissing the complaint.

FISHER, J.P., ANGIOLILLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

April 1, 2008

EL-HENNAWY v DAVITA, INC.