

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

D20232
O/kmg

_____AD3d_____

Submitted - June 20, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-06308

DECISION & ORDER

Robert Liere, etc., respondent, v Audrey Paini,
et al., appellants.

(Index No. 6579-05)

Johannesen & Johannesen, PLLC, Rocky Point, N.Y. (Richard Johannesen of counsel), for appellants.

Robert J. Cava, P.C., West Babylon, N.Y., for respondent.

In an action to recover damages for defamation, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated June 5, 2007, as granted the plaintiff's motion for summary judgment dismissing the counterclaim alleging that the action violated Civil Rights Law §§ 70-a and 76-a.

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

In response to the plaintiff's prima facie showing that he is not a "public applicant or permittee" as defined by Civil Rights Law § 76-a(1)(b), the defendants failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the plaintiff's motion for summary judgment dismissing the counterclaim alleging that the instant action constituted an impermissible strategic lawsuit against public participation (*see* Civil Rights Law §§ 70-a, 76-a [1][b]; *Gill Farms v Darrow*, 256 AD2d 995, 997-998).

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

ENTER:



James Edward Pelzer
Clerk of the Court

September 16, 2008

LIERE v PAINI