

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

D22912
G/prt

____AD3d____

Argued - March 9, 2009

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-06956

DECISION & ORDER

J. David Donahey, appellant, v
Linden Chamberlin, respondent.

(Index No. 4900/02)

Corbally, Gartland and Rappleyea, LLP, Poughkeepsie, N.Y. (Allan B. Rappleyea of counsel), for appellant.

Whalen & Whalen, Dover Plains, N.Y. (Thomas J. Whalen of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from a judgment of the Supreme Court, Dutchess County (Brands, J.), dated July 9, 2007, which, upon an order of the same court dated July 11, 2006, granting the defendant's motion pursuant to CPLR 4401 for judgment as a matter of law, made after a nonjury trial, is in favor of the defendant and against him, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

A motion for judgment as a matter of law pursuant to CPLR 4401 may be granted only when the trial court determines, upon the evidence presented, "there is no rational process by which the fact trier could base a finding in favor of the nonmoving party" (*Szczerbiak v Pilat*, 90 NY2d 553, 556; *Handwerker v Dominick L. Cervi, Inc.*, 57 AD3d 615). Here, we discern no basis to disturb the Supreme Court's determination.

RIVERA, J.P., ANGIOLILLO, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 21, 2009

DONAHEY v CHAMBERLIN