

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

D26308
G/kmg

_____AD3d_____

Argued - January 19, 2010

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2008-08363

DECISION & ORDER

Albert R. Walls, appellant,
v Town of Islip, et al., respondents.

(Index No. 11376/04)

Judith N. Berger, Babylon, N.Y., for appellant.

Lewis Johs Avallone Aviles, LLP, Riverhead, N.Y. (John B. Saville of counsel), for respondents.

In an action, inter alia, to recover damages for defamation and for a judgment declaring that the plaintiff's home has never been used as a multi-family dwelling, the plaintiff appeals from so much of an order of the Supreme Court, Suffolk County (Molia, J.), dated July 7, 2008, as granted that branch of the defendants' motion which was for summary judgment dismissing the complaint.

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

The defendants established their prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324-325) by establishing, inter alia, that the government officials who made the allegedly defamatory statements were entitled to an absolute privilege against claims of defamation (*see Bisaccia v Funicello*, 149 AD2d 645; *cf. Baumblatt v Battalia*, 134 AD2d 226, 228-229), and that the remedy of declaratory judgment was not available in this case (*cf. Reed v Littleton*, 275 NY 150, 157; *Cooper v Town of Islip*, 56 AD3d 511, 512-513). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68

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NY2d at 324). Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the complaint.

SKELOS, J.P., COVELLO, BALKIN and AUSTIN, 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