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| <b>Minichello v Staten Is. Med. Group</b>  |
| 2007 NY Slip Op 30044(U)   |
| March 9, 2007  |
| Supreme Court, Richmond County   |
| Docket Number: 0101839   |
| Judge: Judith N. McMahon   |
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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**TERESA MINICHELLO,**

**Plaintiff,**

**McMAHON**

**- against-**

**STATEN ISLANDS MEDICAL GROUP,**

**Defendant.**

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**DCM PART 5**

**Present:**

**HON. JUDITH N.**

**DECISION AND ORDER**

**Index No. 101839/06**

**Motion No. 001**

The following papers numbered 1 to 5 used on this motion this 23<sup>rd</sup> day of January, 2007.

|   | Papers<br>Numbered |
|---|--------------------|
| Notice of Motion (Affirmation in Support) _____ | 1                  |
| Memorandum of Law _____                         | 2                  |
| Affirmation in Opposition _____                 | 3                  |
| Proposed Amended Complaint _____                | 4                  |
| Reply Memorandum of Law _____                   | 5                  |
| Other Papers _____                              |                    |

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In June, 2006, the plaintiff Theresa Minichello commenced the instant action to recover damages for her alleged unlawful termination as Laboratory Supervisor with the defendant Staten Islands Medical Group. The complaint alleges that the plaintiff was terminated in retaliation for reporting unsafe conditions with respect to exit routes, fire extinguishers and circuit breakers in violation of New York Labor Law § 740 ("The Whistleblower Statute"). The defendant moves pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action on the ground that the plaintiff failed to specify the law, rule or

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regulation that the defendant allegedly violated and that she failed to describe how the unsafe working conditions were a danger to the public at large. In opposition to the motion, the plaintiff submitted an amended complaint to add factual allegations in support of her cause of action. The plaintiff alleges that the amended complaint adequately sets forth the unsafe working conditions that she complained of and that she was terminated subsequent to reporting these conditions to OSHA.

Labor Law § 740 creates a cause of action in favor of an employee who has been unlawfully discharged as a consequence of engaging in certain protected conduct (*see*, Mazzacone v. Corlies Assoc., 21 AD3d 1066 [2d Dept. 2005]; Quirk v. Emergency Hous. Group, 305 AD2d 390 [2d Dept. 2003]). It is essential to the viability of a Labor Law § 740 claim that the plaintiff specify the law, rule or regulation that has actually been violated by the defendant's behavior, and that she describe how the defendant's activities has endangered the health or safety of the public (*see*, Bordell v. General Electric Co., 88 NY2d 869 [1996]; Pipia v. Nassau County, 34 AD3d 664 [2d Dept. 2006]). Giving the benefit of all favorable inferences at this stage of the proceedings (*see*, Leon v. Martinez, 84 NY2d 83, 87-88 [2006]; Castaldi v. 39 Winfield Assoc., 30 AD3d 458 [2d Dept. 2006]), neither the complaint nor the amended complaint satisfies this standard. The plaintiff has failed to identify which specific law, rule or regulation was the defendant violated, and failed to indicate how defendant's activities posed a substantial and specific danger to the public health and safety (*see*, Blumenreich v.

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**North Shore Health System, Inc., 287 AD2d 529 [2d Dept. 2001]; Lamagana v. New York State Assn. For Help of Retarded Children, 158 AD2d 588, 589 [2d Dept. 1990]).**

**Accordingly, it is**

**ORDERED that the defendant's motion pursuant to CPLR 3211(a)(7) to dismiss the complaint is granted and the complaint is dismissed; and it is further**

**ORDERED that the Clerk is directed to enter judgment accordingly.**

**E N T E R,**

**Dated: March 9, 2007**

**J.S.C.**