

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1486

CA 09-01351

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, GREEN, AND GORSKI, JJ.

JOANNE M. DEGEORGE, PLAINTIFF-RESPONDENT,

V

ORDER

MATTHEW F. BAUMAN, DEFENDANT-APPELLANT.

LAW OFFICES OF DANIEL GUARASCI, WILLIAMSVILLE (PHYLISS A. HAFNER OF COUNSEL), FOR DEFENDANT-APPELLANT.

HANDELMAN, WITKOWICZ & LEVITSKY, ROCHESTER (STEVEN M. WITKOWICZ OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Erie County Court (Michael L. D'Amico, J.), entered August 21, 2008. The order affirmed an order of the Buffalo City Court (Kevin J. Keane, J.), entered November 21, 2007, which had denied defendant's motion to dismiss the complaint due to plaintiff's spoliation of evidence.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (see *Ellingsworth v City of Watertown*, 113 AD2d 1013, 1014).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court