

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

1595

CA 09-01393

PRESENT: HURLBUTT, J.P., SMITH, FAHEY, AND CARNI, JJ.

AURORA MEDICAL GROUP, P.C., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

TIFFANY GENEWICK, M.D., DEFENDANT-APPELLANT.

SIEGEL, KELLEHER & KAHN, LLP, BUFFALO (ROSS S. GELBER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MCGEE & GELMAN, BUFFALO (JENNIFER L. FRIEDMAN OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John M. Curran, J.), entered February 13, 2009 in a breach of contract action. The order granted the motion of plaintiff for leave to serve a second amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for, inter alia, breach of its employment contract with defendant. We conclude that Supreme Court properly granted plaintiff's motion seeking leave to serve a second amended complaint. "[G]enerally, leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment[s are] not patently lacking in merit . . . , and the decision whether to grant leave to amend a [pleading] is committed to the sound discretion of the court" (*Tag Mech. Sys., Inc. v V.I.P. Structures, Inc.*, 63 AD3d 1504, 1505 [internal quotation marks omitted]; see CPLR 3025 [b]; *Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959). Contrary to defendant's contentions, the proposed amendments "are based upon the same transactions and occurrences as the claims asserted in the first amended complaint and are not time-barred" (*Maxon v Franklin Traffic Serv.*, 261 AD2d 830, 830).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court