

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

543

CA 09-02393

PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND PINE, JJ.

BRIAN POULSEN, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

LIGHTHOUSE ASSEMBLY AT HIGH FALLS,
DEFENDANT-APPELLANT.

HISCOCK & BARCLAY, LLP, ROCHESTER (ROBERT M. SHADDOCK OF COUNSEL), FOR
DEFENDANT-APPELLANT.

CELLINO & BARNES, P.C., ROCHESTER (BRETT L. MANSKE OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Drury, J.), entered March 27, 2009 in a personal injury action. The order denied the motion of defendant for a change of venue.

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

Memorandum: We conclude that Supreme Court properly denied defendant's motion for a change of venue of this action from Erie County to Monroe County. Defendant failed to meet its "burden of demonstrating that the convenience of material witnesses would be better served by the change" (*Davis v Firman*, 53 AD3d 1101, 1102 [internal quotation marks omitted]; see CPLR 510 [3]; *Rochester Drug Coop., Inc. v Marcott Pharmacy N. Corp.*, 15 AD3d 899).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court