

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

163

CA 13-01149

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

ROBERT BERKLEY PHYSICAL THERAPY, P.C.,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

THE HISTORIC WOODRUFF BLOCK, LLC,
DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

RICHARD PALMA, NEW YORK CITY, FOR DEFENDANT-APPELLANT.

BOND, SCHOENECK & KING, PLLC, OSWEGO (SCOTT J. DELCONTE OF COUNSEL),
FOR PLAINTIFF-RESPONDENT.

Appeal from an order and judgment (one paper) of the Supreme Court, Oswego County (Norman W. Seiter, Jr., J.), entered September 10, 2012. The order and judgment awarded money damages to plaintiff.

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

Memorandum: Defendant's sole contention on appeal is that a contract was never formed based on lack or failure of consideration, and thus that Supreme Court erred in granting plaintiff's motion for summary judgment and entering judgment in plaintiff's favor. That contention is raised for the first time on appeal and thus is not properly before us (*see Ciesinski v Town of Aurora*, 202 AD2d 984, 985).

Entered: February 14, 2014

Frances E. Cafarell
Clerk of the Court