

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D20119
O/hu

_____AD3d_____

Argued - June 17, 2008

A. GAIL PRUDENTI, P.J.
DAVID S. RITTER
ANITA R. FLORIO
WILLIAM E. McCARTHY, JJ.

2007-09911

DECISION & ORDER

Surinder Sandhu, etc., appellant, v Mercy Medical
Center, respondent, et al., defendant.

(Index No. 4957/07)

Thomas F. Liotti, Garden City, N.Y. (Edward Andrew Paltzik of counsel), for
appellant.

Iseman, Cunningham, Riester & Hyde, LLP, Poughkeepsie, N.Y. (Justin W. Gray of
counsel), for respondent.

In an action to recover damages for breach of contract and defamation, the plaintiff
appeals from an order of the Supreme Court, Nassau County (Martin, J.), dated September 17, 2007,
which granted that branch of the motion of the defendant Mercy Medical Center which was to dismiss
the complaint insofar as asserted against it pursuant to CPLR 3211(a)(5).

ORDERED that the order is affirmed, with costs.

“Under the doctrine of res judicata, a disposition on the merits bars litigation between
the same parties or those in privity with them of a cause of action arising out of the same transaction
or series of transactions as a cause of action that either was raised or could have been raised in the
prior action” (*Barbieri v Bridge Funding*, 5 AD3d 414, 415; *see Matter of Josey v Goord*, 9 NY3d
386, 389; *Matter of Hunter*, 4 NY3d 260, 269). Under the transactional approach to res judicata
applied in New York State, “once a claim is brought to a final conclusion, all other claims arising out
of the same transaction or series of transactions are barred, even if based upon different theories or
if seeking a different remedy” (*O’Brien v City of Syracuse*, 54 NY2d 353, 357; *see ADC Contr. &*
Const., Inc. v Town of Southampton, 50 AD3d 1025; *Waldman v Waldman*, 47 AD3d 638).

September 23, 2008

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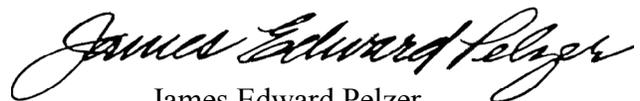
Here, the Supreme Court properly granted that branch of the motion of the defendant Mercy Medical Center (hereinafter Mercy) which was to dismiss the breach of contract cause of action insofar as asserted against it. The plaintiff's contention relating to his termination for cause by the defendant Long Island Emergency Care, P.C. (hereinafter LIEC), on April 25, 2003, and the resultant loss of his medical staff privileges at Mercy, was adjudicated in an action entitled *Matter of Sandhu v Mercy Med. Ctr.* (35 AD3d 479) commenced in the Supreme Court, Nassau County, under Index No. 03-012882 (hereinafter *Sandhu I*), in which, inter alia, the challenges of the plaintiff (as petitioner) to the validity of the employment agreement were rejected on the merits. The contentions relating to breach of contract in the instant action are identical to those which were raised or could have been raised in *Sandhu I*, and the same parties are involved (*see Matter of Juan C. v Cortines*, 89 NY2d 659, 667; *Tartaglione v Pugliese*, 34 AD3d 446). Accordingly, Mercy was entitled to dismissal of the breach of contract cause of action insofar as asserted against it on the ground of res judicata (*see CPLR 3211[a][5]*; *ADC Contr. & Const., Inc. v Town of Southampton*, 50 AD3d 1025; *Sterngrass v Soffer*, 27 AD3d 549; *Barbieri v Bridge Funding*, 5 AD3d 414).

Further, the Supreme Court properly granted that branch of Mercy's motion which was to dismiss the defamation cause of action as time-barred (*see CPLR 215[3]*, 3211[a][5]; *Losco Group v Yonkers Residential Ctr.*, 276 AD2d 532).

The plaintiff's remaining contention is academic in light of our determination.

PRUDENTI, P.J., RITTER, FLORIO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court