

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

888

CA 18-00173

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND DEJOSEPH, JJ.

MARILYN MCDONOUGH, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

TRANSIT ROAD APARTMENTS, LLC, AND PARK LANE
LUXURY APARTMENTS, DEFENDANTS-APPELLANTS.

BARTH SULLIVAN BEHR, BUFFALO (LAURENCE D. BEHR OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

BROWN CHIARI LLP, BUFFALO (DAVID W. OLSON OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (E. Jeannette Ogden, J.), entered March 28, 2017. The order denied the motion of defendants for summary judgment dismissing the complaint.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Defendants appeal from an order denying their motion for summary judgment dismissing the complaint. The right to appeal from an intermediate order terminates upon the entry of a final judgment (*see Matter of Aho*, 39 NY2d 241, 248 [1976]; *Deuser v Precision Constr. & Dev., Inc.*, 149 AD3d 1540, 1540 [4th Dept 2017]) and, because an amended judgment in favor of plaintiff was entered on July 19, 2018 following a bifurcated trial, defendants' appeal from the intermediate order must be dismissed (*see Deuser*, 149 AD3d at 1540; *see generally Chase Manhattan Bank, N.A. v Roberts & Roberts*, 63 AD2d 566, 567 [1st Dept 1978]). Defendants may raise their contentions in an appeal from the amended judgment (*see Deuser*, 149 AD3d at 1540).

Entered: September 28, 2018

Mark W. Bennett
Clerk of the Court