

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

1324

CA 18-01052

PRESENT: SMITH, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

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MICHAEL P. GARRETT, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

1030 EAST GENESEE COMPANY, LLC,  
DEFENDANT-APPELLANT,  
ET AL., DEFENDANTS.

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LAW OFFICES OF THERESA J. PULEO, SYRACUSE (MICHELLE M. DAVOLI OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FROMEN, ATTORNEYS AT LAW, P.C., BUFFALO (THOMAS J. GRILLO,  
JR., OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County (Gregory R. Gilbert, J.), entered October 24, 2017. The order, insofar as appealed from, denied the motion of defendant 1030 East Genesee Company, LLC, for summary judgment dismissing the complaint against it.

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

Memorandum: Plaintiff commenced this action to recover damages for injuries he sustained when he fell in an allegedly icy parking lot owned by defendant-appellant (defendant). Defendant now appeals from an order that, inter alia, denied its motion for summary judgment dismissing the complaint against it. We affirm. Supreme Court properly denied the motion because defendant failed to meet its initial burden of establishing that its agent's snow removal efforts did not create or exacerbate the icy conditions that allegedly caused plaintiff's fall (*see Morris v Home Depot USA*, 152 AD3d 669, 670-671 [2d Dept 2017]).

Entered: February 1, 2019

Mark W. Bennett  
Clerk of the Court