

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

1484

CA 12-00921

PRESENT: SMITH, J.P., LINDLEY, SCONIERS, AND VALENTINO, JJ.

MARY J. HALL AND FILLMORE V. HALL,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

CITY FENCE, INC., DEFENDANT-RESPONDENT,
DR. R. REED STEVENS, DEFENDANT-APPELLANT,
ET AL., DEFENDANTS.

BURGIO, KITA & CURVIN, BUFFALO (STEVEN P. CURVIN OF COUNSEL), FOR
DEFENDANT-APPELLANT.

WEBSTER SZANYI LLP, BUFFALO (MARK C. DAVIS OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

LIPPMAN O'CONNOR, BUFFALO (MATTHEW J. DUGGAN OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Patrick H. NeMoyer, J.), entered March 19, 2012. The order, among other things, denied the motion of defendant Dr. R. Reed Stevens for summary judgment.

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

Memorandum: We affirm for reasons stated in the decision at Supreme Court. We add only that, to the extent that the amended complaint, as amplified by the bill of particulars, may be construed as alleging that defendant Dr. R. Reed Stevens is vicariously liable for the alleged negligence of defendant City Fence, Inc. (City Fence), the court properly noted in its decision that no such liability can attach because City Fence is an independent contractor (*see Kleeman v Rheingold*, 81 NY2d 270, 273-274).

Entered: February 1, 2013

Frances E. Cafarell
Clerk of the Court