

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

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CA 13-01034

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND VALENTINO, JJ.

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GLORY FOLMSBEE AND MARK FOLMSBEE,  
PLAINTIFFS-RESPONDENTS,

V

ORDER

THE GOODYEAR TIRE & RUBBER COMPANY, DOING  
BUSINESS AS GOODYEAR AUTO SERVICE CENTERS,  
DEFENDANT,  
AND BENDERSON PROPERTIES, INC., FORMERLY KNOWN  
AS BENDERSON DEVELOPMENT COMPANY, LLC,  
DEFENDANT-APPELLANT.

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KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (RODGER P. DOYLE, JR., OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

ANDREWS, BERNSTEIN, MARANTO & NICOTRA, PLLC, BUFFALO (ROBERT J.  
MARANTO, JR., OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Erie County (Patrick H. NeMoyer, J.), entered August 14, 2012 in a personal injury action. The order, *inter alia*, denied the motion of defendant Benderson Properties, Inc., formerly known as Benderson Development Company, LLC, for summary judgment dismissing the complaint against it and granted plaintiffs partial summary judgment dismissing the affirmative defense alleging assumption of risk.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at Supreme Court.

Entered: December 27, 2013

Frances E. Cafarell  
Clerk of the Court