

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

192

CA 14-01391

PRESENT: PERADOTTO, J.P., CARNI, SCONIERS, AND WHALEN, JJ.

MICHELLE CASHION, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ALEXANDER T. BAJOREK AND JUDITH BAJOREK,
DEFENDANTS-APPELLANTS.

SCHNITTER CICCARELLI MILLS PLLC, EAST AMHERST (BRITTANY A. NASRADINAJ
OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

NICHOLAS, PEROT, SMITH, BERNHARDT & ZOSH, P.C., AKRON (MICHAELANGELO
J. CIERI OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Niagara County
(Catherine R. Nugent Panepinto, J.), entered October 29, 2013 in a
personal injury action. The order denied the motion of defendants for
summary judgment dismissing the complaint.

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

Memorandum: Plaintiff commenced this action seeking damages for
injuries she allegedly sustained when she slipped and fell from
outdoor steps at the home she rented from defendants. Supreme Court
denied defendants' motion for summary judgment dismissing the
complaint. We affirm.

Contrary to defendants' contentions, we conclude that there are
several triable issues of fact precluding summary judgment. First,
there is an issue of fact whether they maintained the premises at
issue in a reasonably safe condition (*see generally Zuckerman v City
of New York*, 49 NY2d 557, 562). We note that the allegedly open and
obvious condition of the steps does not absolve defendants of their
duty to keep the stairs in a safe condition but, instead, bears only
on plaintiff's comparative fault (*see Landahl v City of Buffalo*, 103
AD3d 1129, 1131; *Verel v Ferguson Elec. Constr. Co., Inc.*, 41 AD3d
1154, 1156). Second, there is an issue of fact whether any breach of
that duty "was a substantial cause of the events which produced the
injury" (*Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 314-315, *rearg
denied* 52 NY2d 784; *see Hahn v Tops Mkts., LLC*, 94 AD3d 1546, 1548;
Prystajko v Western N.Y. Pub. Broadcasting Assn., 57 AD3d 1401, 1403).
Finally, there are issues of fact whether defendants created the
allegedly dangerous condition (*cf. Navetta v Onondaga Galleries LLC*,
106 AD3d 1468, 1469; *see generally Ohanessian v Chase Manhattan Realty*

Leasing Corp., 193 AD2d 567, 567), and whether defendants had constructive notice of that condition (see generally *Zuckerman*, 49 NY2d at 562; *Wilson v 100 Carlson Park, LLC*, 113 AD3d 1118, 1119).

Entered: March 20, 2015

Frances E. Cafarell
Clerk of the Court