

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

1388

CA 15-00498

PRESENT: SCUDDER, P.J., CENTRA, CARNI, VALENTINO, AND DEJOSEPH, JJ.

---

SHELLEY CHMIEL, PLAINTIFF-RESPONDENT,

V

ORDER

ROCKWELL CONSTRUCTION, INC., DOING BUSINESS AS  
BROWNSTONE HOMES, ROBERT BRICELAND, INDIVIDUALLY,  
DEFENDANTS-RESPONDENTS,  
ZELASKO CONSTRUCTION, INC., JRZ ARCHITECTURE, PLLC,  
JOHN ZYWICZYNSKI, DEFENDANTS-APPELLANTS,  
ET AL., DEFENDANTS.

-----  
ROCKWELL CONSTRUCTION, INC., THIRD-PARTY  
PLAINTIFF-RESPONDENT,

V

EARTH DIMENSIONS, INC., THIRD-PARTY  
DEFENDANT-APPELLANT.

---

BROWN & KELLY, LLP, BUFFALO (KENNETH A. KRAJEWSKI OF COUNSEL), FOR  
DEFENDANT-APPELLANT ZELASKO CONSTRUCTION, INC.

SUGARMAN LAW FIRM, LLP, SYRACUSE (JENNA W. KLUCSIK OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS JRZ ARCHITECTURE, PLLC AND JOHN ZYWICZYNSKI.

PILLINGER MILLER TARALLO, LLP, SYRACUSE (JEFFREY D. SCHULMAN OF  
COUNSEL), FOR THIRD-PARTY DEFENDANT-APPELLANT.

JUSTIN S. WHITE, WILLIAMSVILLE, FOR PLAINTIFF-RESPONDENT.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (JUSTIN HENDRICKS OF  
COUNSEL), FOR DEFENDANTS-RESPONDENTS AND THIRD-PARTY PLAINTIFF-  
RESPONDENT.

-----  
Appeals from an order of the Supreme Court, Erie County (Timothy J. Drury, J.), entered June 17, 2014. The order, among other things, denied in part the motions of defendants JRZ Architecture, PLLC, John Zywczyński and Zelasko Construction, Inc., for summary judgment, and denied the motion of third-party defendant Earth Dimensions, Inc., for summary judgment.

It is hereby ORDERED that the order so appealed from is

unanimously affirmed without costs.

Entered: December 23, 2015

Frances E. Cafarell  
Clerk of the Court