

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

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CA 16-01577

PRESENT: WHALEN, P.J., LINDLEY, NEMOYER, CURRAN, AND TROUTMAN, JJ.

DYLAN DEUSER, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

PRECISION CONSTRUCTION & DEVELOPMENT, INC.,
DEFENDANT-APPELLANT,
ET AL., DEFENDANTS.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (MELISSA A. FOTI OF COUNSEL),
FOR DEFENDANT-APPELLANT.

MARCUS & CINELLI, LLP, WILLIAMSVILLE (BRIAN L. CINELLI OF COUNSEL),
FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John L. Michalski, A.J.), entered April 13, 2016. The order, insofar as appealed from, denied the motion of defendant Precision Construction & Development, Inc. for summary judgment dismissing the complaint against it.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Precision Construction & Development, Inc. (defendant) appeals from an order that, inter alia, denied its motion for summary judgment dismissing the complaint. "The right to appeal from an intermediate order terminates with the entry of a final judgment" (*City of Syracuse v COR Dev. Co., LLC*, 147 AD3d 1510, 1510 [internal quotation marks omitted]; see *Matter of Aho*, 39 NY2d 241, 248; see generally CPLR 5501 [a] [1]). Because a final judgment in this action was entered on January 17, 2017, defendant's appeal from the intermediate order must be dismissed. Defendant may raise its contentions in an appeal from the final judgment (see generally *Chase Manhattan Bank, N.A. v Roberts & Roberts*, 63 AD2d 566, 567).

Entered: April 28, 2017

Frances E. Cafarell
Clerk of the Court