

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

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CA 22-00366

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, OGDEN, AND GREENWOOD, JJ.

ALICE MONTGOMERY, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

BURLINGTON COAT FACTORY OF TEXAS, INC.,
EXCEL BUILDING SERVICES CORPORATION, ALSO
KNOWN AS EXCEL BUILDING SERVICES, LLC, AND
T2H SYRACUSE, INC., DOING BUSINESS AS
HELPING HANDS, DEFENDANTS-RESPONDENTS.

VINAL & VINAL, P.C., BUFFALO (JEANNE M. VINAL OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

SUGARMAN LAW FIRM, LLP, SYRACUSE (JENNA W. KLUCSIK OF COUNSEL), FOR
DEFENDANT-RESPONDENT BURLINGTON COAT FACTORY OF TEXAS, INC.

LAW OFFICES OF SANTACROSE, FRARY, TOMKO, DIAZ-ORDAZ & WHITING, BUFFALO
(RICHARD S. POVEROMO OF COUNSEL), FOR DEFENDANT-RESPONDENT EXCEL
BUILDING SERVICES CORPORATION, ALSO KNOWN AS EXCEL BUILDING SERVICES,
LLC.

LIPPMAN O'CONNOR, BUFFALO (ROBERT H. FLYNN OF COUNSEL), FOR
DEFENDANT-RESPONDENT T2H SYRACUSE, INC., DOING BUSINESS AS HELPING
HANDS.

Appeal from an order of the Supreme Court, Monroe County (Debra A. Martin, A.J.), entered February 15, 2022. The order granted the motions of defendants for summary judgment dismissing the second amended complaint against them.

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

Memorandum: Plaintiff appeals from an order insofar as it granted defendants' motions seeking summary judgment dismissing the second amended complaint against them. We affirm for reasons stated in the decision at Supreme Court. We write only to note that, contrary to the court's determination, it was not required under 22 NYCRR 202.8-g (former [c]) to deem the assertions in two defendants' statements of material facts admitted based on plaintiff's failure to controvert them (*see On the Water Prods., LLC v Glynos*, 211 AD3d 1480, 1481 [4th Dept 2022]). We nonetheless conclude that the court properly determined that defendants otherwise met their initial burden on their motions, and plaintiff failed to raise a triable issue of

fact in opposition (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Entered: June 9, 2023

Ann Dillon Flynn
Clerk of the Court