

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

684

CA 23-01731

PRESENT: SMITH, J.P., BANNISTER, MONTOUR, DELCONTE, AND HANNAH, JJ.

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SUZANNE K. CIANCI, LIMITED ADMINISTRATOR OF THE  
ESTATE OF DONALD J. TUOHEY, SR., DECEASED,  
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

THE UNIVERSITY OF ROCHESTER, DEFENDANT-APPELLANT.

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OSBORN, REED & BURKE, LLP, ROCHESTER (AIMEE LAFEVER KOCH OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

PETERSON SPATORICO LLP, ROCHESTER (STEVEN A. LUCIA OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (William K. Taylor, J.), entered October 10, 2023. The order denied the motion of defendant to dismiss the complaint.

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

Memorandum: Defendant appeals from an order that, upon treating its motion solely as one to dismiss the complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, denied the motion. "The right to appeal from an intermediate order terminates with the entry of a final judgment" (*McCann v Gordon*, 204 AD3d 1449, 1449 [4th Dept 2022], *appeal dismissed* 38 NY3d 1158 [2022] [internal quotation marks omitted]; see *Matter of Aho*, 39 NY2d 241, 248 [1976]; see generally CPLR 5501 [a] [1]). Inasmuch as the record of this case in the New York State Courts Electronic Filing System establishes that a final judgment in favor of plaintiff following a jury trial was entered on July 12, 2024, of which we may take judicial notice (see *McCann*, 204 AD3d at 1449), defendant's appeal from the intermediate order must be dismissed (see *id.*; *McDonough v Transit Rd. Apts., LLC*, 164 AD3d 1603, 1603 [4th Dept 2018]). Defendant may raise its contentions in an appeal from the judgment (see *McDonough*, 164 AD3d at 1603; *Deuser v Precision Constr. & Dev., Inc.*, 149 AD3d 1540, 1540 [4th Dept 2017]).

Entered: October 4, 2024

Ann Dillon Flynn  
Clerk of the Court