

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

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CA 21-00261

PRESENT: CENTRA, J.P., NEMOYER, CURRAN, AND BANNISTER, JJ.

LINDA QUINONES AND ANGEL BILBRAUT,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

MARINER HOUSING DEVELOPMENT FUND COMPANY, INC.,
CRM RENTAL MANAGEMENT, INC.,
DEFENDANTS-APPELLANTS,
ET AL., DEFENDANT.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, BUFFALO (CORY J. WEBER OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOHN A. COLLINS OF COUNSEL),
FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Paul Wojtaszek, J.), entered January 29, 2021. The order denied the motion of defendants Mariner Housing Development Fund Company, Inc., and CRM Rental Management, Inc., for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted and the amended complaint is dismissed against defendants-appellants.

Memorandum: In this slip and fall negligence action, defendants-appellants (defendants) appeal from an order that denied their motion for summary judgment dismissing the amended complaint against them. We agree with defendants that they established their entitlement to judgment as a matter of law on their storm in progress affirmative defense (*see Battaglia v MDC Concourse Ctr., LLC*, 34 NY3d 1164, 1165-1166 [2020]). In opposition, plaintiffs failed to raise a triable issue of fact (*see id.* at 1166; *Glover v Botsford*, 109 AD3d 1182, 1183-1184 [4th Dept 2013]). We therefore reverse the order and grant the motion. Defendants' remaining contention is academic in light of our determination.

Entered: March 18, 2022

Ann Dillon Flynn
Clerk of the Court