

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

321.1

CA 23-01144

PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, DELCONTE, AND HANNAH, JJ.

ANTHONY P. GALLO, III, PLAINTIFF-RESPONDENT,

V

ORDER

GERALD D. OTTEN, ELBERT VELDJESGRAAF,
ADMIRAL-MERCHANTS MOTOR FREIGHT, INC.,
DEFENDANTS-APPELLANTS,
ET AL., DEFENDANTS.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (JUSTIN L. HENDRICKS OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

SMITH, MURPHY & SCHOEPERLE, LLP, BUFFALO (DENNIS P. MESSALL OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Donna M. Siwek, J.), entered December 14, 2022. The order, inter alia, granted plaintiff's motion for summary judgment on the issue of the negligence of defendants Gerald D. Otten, Elbert Veldjesgraaf, and Admiral-Merchants Motor Freight, Inc., and seeking dismissal of those defendants' affirmative defenses based on plaintiff's alleged culpable conduct and assumption of the risk.

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

Entered: May 3, 2024

Ann Dillon Flynn
Clerk of the Court