

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

206

CA 08-01755

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

KATHLEEN RUGGIO AND ROBERT RUGGIO, SR.,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

PCCB, INC., DOING BUSINESS AS PORT CITY
CAFÉ & BAKERY, DEFENDANT,
LAURIE O'BRIEN AND WILLIAM O'BRIEN,
INDIVIDUALLY, DEFENDANTS-APPELLANTS.

BOND, SCHOENECK & KING, PLLC, OSWEGO (DOUGLAS M. MCRAE OF COUNSEL),
FOR DEFENDANTS-APPELLANTS.

S. ROBERT WILLIAMS, PLLC, SYRACUSE (MICHELLE A. ELLSWORTH OF COUNSEL),
FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Oswego County (James W. McCarthy, A.J.), entered November 20, 2007 in a personal injury action. The order denied the motion of defendants Laurie O'Brien and William O'Brien for summary judgment.

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

Memorandum: Plaintiffs commenced this action seeking damages for injuries allegedly sustained by plaintiff Kathleen Ruggio when she bit into a foreign object in a sandwich purchased from a restaurant owned by defendant PCCB, Inc., doing business as Port City Café & Bakery (PCCB). Laurie O'Brien and William O'Brien (collectively, defendants) are shareholders of PCCB. Before discovery, defendants moved for summary judgment dismissing the amended complaint against them. Supreme Court properly denied the motion without prejudice. We agree with plaintiffs that discovery may uncover "facts essential to justify opposition" to the motion (CPLR 3212 [f]; see *Wright v Shapiro*, 16 AD3d 1042, 1043).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court