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

42

CA 14-01272

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

MELISSA A. TRACY, PLAINTIFF-RESPONDENT,

V MEMORANDUM AND ORDER

DAVID CHRISTA CONSTRUCTION, INC., LECHASE CONSTRUCTION SERVICES, LLC, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS.

HISCOCK & BARCLAY LLP, ROCHESTER (MARK T. WHITFORD, JR., OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

HIRSCH & TUBIOLO, P.C., ROCHESTER (BRYAN S. KORNFIELD OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Ann Marie Taddeo, J.), entered September 26, 2013. The order denied the motion of defendants David Christa Construction, Inc. and LeChase Construction Services, LLC, for summary judgment.

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

Memorandum: Plaintiff commenced this action seeking damages for injuries that she allegedly sustained when she slipped and fell at the Greater Rochester International Airport. Defendant David Christa Construction, Inc. (Christa) was the construction manager for a construction project at the airport, and defendant LeChase Construction Services, LLC (LeChase) was the general contractor for the project. Defendants-appellants (defendants) moved for summary judgment dismissing the complaint against them contending, inter alia, that they did not owe plaintiff a duty of care. We conclude that Supreme Court erred in denying the motion. As a preliminary matter, we note that, during the pendency of this appeal, plaintiff withdrew her contention that the deposition testimony excerpts submitted by defendants in support of their motion were not in admissible form, and we therefore do not address that contention. We conclude that defendants met their initial burden of establishing that they owed no duty of care to plaintiff who, at the time of her accident, was merely a third-party passerby with no relationship of privity with defendants (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). In opposition, plaintiff failed to establish that any of the exceptions set forth in *Espinal v Melville Snow Contrs.* (98 NY2d 136, 140)

applies (*see generally id.*; *Sniatecki v Violet Realty*, 98 AD3d 1316, 1320-1321).

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court