

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

551

CA 14-01818

PRESENT: SCUDDER, P.J., SMITH, SCONIERS, WHALEN, AND DEJOSEPH, JJ.

V.M. PAOLOZZI IMPORTS, INC., DOING BUSINESS
AS DEALMAKER HONDA, DOING BUSINESS AS DEALMAKER
HONDA OF WATERTOWN, DEALMAKER AUTO GROUP, L.L.C.,
DEALMAKER DODGE, LLC, DEALMAKER FORD, INC.,
DEALMAKER, L.L.C., DOING BUSINESS AS SEAWAY
CHEVROLET-OLDS, B&J AUTO SALES, INC., DOING
BUSINESS AS SEAWAY FORD, DEALMAKER FORD OF CLAY,
LLC, DOING BUSINESS AS DEALMAKER BODY SHOP, AND
DEALMAKER NISSAN, LLC, PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

JUNIOR STEFANINI, DEFENDANT-RESPONDENT,
ET AL., DEFENDANT.

BOND, SCHOENECK & KING, PLLC, SYRACUSE (BRIAN J. BUTLER OF COUNSEL),
FOR PLAINTIFFS-APPELLANTS.

TOWNE, RYAN & PARTNERS, P.C., ALBANY (DANA K. SCALERE OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Jefferson County (Hugh A. Gilbert, J.), entered December 20, 2013. The order granted the motion of defendant Junior Stefanini for summary judgment dismissing plaintiffs' complaint as against him.

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

Memorandum: We affirm for reasons stated in the decision at Supreme Court. We write only to note that, although the court erred in determining that plaintiffs failed to plead a fraud cause of action with the requisite specificity pursuant to CPLR 3016 (b), the court nevertheless properly dismissed that cause of action against Junior Stefanini (defendant). The fraud cause of action was based on nothing more than speculation and unsubstantiated assertions, and plaintiffs failed to raise an issue of fact to defeat that part of defendant's motion for summary judgment dismissing it against him (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562).

Entered: June 12, 2015

Frances E. Cafarell
Clerk of the Court