

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

1389

CA 11-02091

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, VALENTINO, AND WHALEN, JJ.

STEPHEN APPLEBEE, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

COUNTY OF CAYUGA, DEFENDANT-RESPONDENT.

COUNTY OF CAYUGA, THIRD-PARTY PLAINTIFF,

V

VILLAGE OF PORT BYRON, THIRD-PARTY
DEFENDANT-RESPONDENT.

(APPEAL NO. 2.)

GREENE & REID, PLCC, SYRACUSE (EUGENE W. LANE OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

LYNCH LAW OFFICE, SYRACUSE, CONGDON, FLAHERTY, O'CALLAGHAN, REID,
DONLON, TRAVIS & FISHLINGER, UNIONDALE (CHRISTINE GASSER OF COUNSEL),
FOR DEFENDANT-RESPONDENT.

DAVIDSON & O'MARA, P.C., ELMIRA (THOMAS F. O'MARA OF COUNSEL), FOR
THIRD-PARTY DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Cayuga County (Mark H. Fandrigh, A.J.), entered September 6, 2011 in a personal injury action. The order, among other things, denied plaintiff's motion to vacate the judgment.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, plaintiff's motion to vacate the judgment entered by the Cayuga County Clerk on February 9, 2011 is granted, and a new trial is granted.

Same Memorandum as in *Applebee v County of Cayuga* ([appeal No. 1] ___ AD3d ___ [Feb. 8, 2013]).

Entered: February 8, 2013

Frances E. Cafarell
Clerk of the Court