

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

1045

CA 13-00091

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND SCONIERS, JJ.

NIAGARA FOODS, INC., BENLEY REALTY CO. AND
THE CHARTER OAK FIRE INSURANCE COMPANY,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

FERGUSON ELECTRIC SERVICE COMPANY, INC.,
DEFENDANT-APPELLANT,
ET AL., DEFENDANT.
(APPEAL NO. 2.)

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, BUFFALO (R. ANTHONY
RUPP, III, OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAW OFFICES OF ROBERT A. STUTMAN, P.C., NEW YORK CITY AND BRANDT,
ROBERSON & BRANDT, P.C., LOCKPORT (CAROL R. FINOCCHIO OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Niagara County (Ralph A. Boniello, III, J.), entered December 24, 2012. The order, upon reargument, denied the motion of defendant Ferguson Electric Service Company, Inc., for summary judgment dismissing the cause of action for breach of contract.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs, the motion of defendant Ferguson Electric Service Company, Inc. with respect to the breach of contract cause of action is granted and the first amended complaint is dismissed in its entirety against that defendant.

Same Memorandum as in *Niagara Foods, Inc. v Ferguson Elec. Serv. Co., Inc.* ([appeal No. 1] ___ AD3d ___ [Nov. 15, 2013]).

Entered: November 15, 2013

Frances E. Cafarell
Clerk of the Court