

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

1213

CA 11-01030

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, GREEN, AND GORSKI, JJ.

DANA MESLER AND CYNTHIA MESLER,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

PODD LLC, DEVELOPERS DIVERSIFIED REALTY
CORPORATION, BG BCF, LLC, ET AL., DEFENDANTS,
AND JJK MANAGEMENT, INC., DEFENDANT-APPELLANT.

DEVELOPERS DIVERSIFIED REALTY CORPORATION AND
BG BCF, LLC, THIRD-PARTY PLAINTIFFS-RESPONDENTS,

V

JJK MANAGEMENT, INC., THIRD-PARTY
DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

LIPPMAN O'CONNOR, BUFFALO (GERARD E. O'CONNOR OF COUNSEL), FOR
DEFENDANT-APPELLANT AND THIRD-PARTY DEFENDANT-APPELLANT.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (NELSON E. SCHULE, JR., OF
COUNSEL), FOR THIRD-PARTY PLAINTIFFS-RESPONDENTS.

PAUL WILLIAM BELTZ, P.C., BUFFALO (DEBRA A. NORTON OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Frank A. Sedita, Jr., J.), entered May 26, 2010 in a personal injury action. The order granted the motion of defendants-third-party plaintiffs for a conditional order of indemnification against defendant-third-party defendant and denied the cross motion of defendant JJK Management, Inc. for summary judgment dismissing plaintiffs' amended complaint against it.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the cross motion of defendant JJK Management, Inc. for summary judgment dismissing the amended complaint against it is granted, that part of the motion of defendants-third-party plaintiffs Developers Diversified Realty Corporation and BG BCF, LLC seeking a conditional order of indemnification in the alternative is denied, and the matter is remitted to Supreme Court, Erie County, to decide that part of the motion seeking compensatory damages in the alternative.

Same Memorandum as in *Mesler v Podd LLC* ([appeal No. 1] ___ AD3d ___ [Nov. 18, 2011]).

Entered: November 18, 2011

Patricia L. Morgan
Clerk of the Court