

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

1104

CA 13-00598

PRESENT: FAHEY, J.P., PERADOTTO, LINDLEY, SCONIERS, AND WHALEN, JJ.

ESTHER L. CIANCIOLA, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
FRANK CIANCIOLA, DECEASED, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

A.O. SMITH WATER PRODUCTS CO., ET AL., DEFENDANTS,
KELLY-MOORE PAINT COMPANY, DEFENDANT-RESPONDENT.

NAPOLI BERN RIPKA SHKOLNIK & ASSOC., LLP, NEW YORK CITY (DENISE A.
RUBIN OF COUNSEL), FOR PLAINTIFF-APPELLANT.

HAWKINS PARNELL THACKSTON & YOUNG LLP, AUSTIN, TEXAS (PATRICIA KAY
ANDREWS, OF THE TEXAS AND OKLAHOMA BARS, ADMITTED PRO HAC VICE, OF
COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Ann Marie Taddeo, J.), entered June 13, 2012. The order granted the motion of defendant Kelly-Moore Paint Company to dismiss the amended complaint and any cross claims against it.

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

Memorandum: Plaintiff appeals from an order granting the motion of Kelly-Moore Paint Company (defendant) to dismiss the amended complaint and any cross claims against it for lack of personal jurisdiction pursuant to CPLR 3211 (a) (8). According to plaintiff, she made a prima facie showing that defendant is subject to long-arm jurisdiction pursuant to CPLR 302 (a) (1) because defendant transacted business within New York and her claims arise from that transaction of business. We conclude that Supreme Court properly granted the motion. Even assuming, arguendo, that defendant transacted business in New York, we conclude that plaintiff did not establish the requisite substantial relationship between defendant's transaction of business and plaintiff's claims against defendant (see *Kruetter v McFadden Oil Corp.*, 71 NY2d 460, 467; *Holness v Maritime Overseas Corp.*, 251 AD2d 220, 224).

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court