

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

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CA 14-01091

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, SCONIERS, AND DEJOSEPH, JJ.

NICOLE MANLEY AND DWAYNE MANLEY,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

RASPBERRIES CAFÉ & CREAMERY, INC.,
DEFENDANT-APPELLANT.

COSTELLO COONEY & FEARON, PLLC, CAMILLUS (TERANCE V. WALSH OF
COUNSEL), FOR DEFENDANT-APPELLANT.

BRINDISI, MURAD, BRINDISI & PEARLMAN, LLP, UTICA (ANTHONY A. MURAD OF
COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Oneida County (Erin P. Gall, J.), entered November 20, 2013. The order, insofar as appealed from, granted those parts of the motion of plaintiffs seeking preclusion and an adverse inference charge.

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

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by plaintiff Nicole Manley when she was struck in the head and face by a large umbrella from the patio seating area of defendant's restaurant. Defendant disposed of the umbrella and was unable to locate the umbrella base, and plaintiffs moved for spoliation sanctions. We conclude that Supreme Court properly granted those parts of plaintiffs' motion seeking an order precluding defendant from presenting evidence concerning the condition of the umbrella and base, as well as an adverse inference charge (*see generally Ortega v City of New York*, 9 NY3d 69, 76). Contrary to defendant's contention, the court properly considered the extent that the spoliation of the evidence prejudiced plaintiffs (*see Puccia v Farley*, 261 AD2d 83, 85), and "[t]he sanction herein was 'appropriately tailored to achieve a fair result' " (*Gogos v Modell's Sporting Goods, Inc.*, 87 AD3d 248, 255).

Entered: March 20, 2015

Frances E. Cafarell
Clerk of the Court