

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

1126

CA 15-00230

PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND VALENTINO, JJ.

TOWN OF AMHERST, A MUNICIPAL CORPORATION, AND
SWEETHOME CENTRAL SCHOOL DISTRICT,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

PEPPER TREE HEIGHTS HOUSING CO., INC., PEPPER
TREE HEIGHTS ASSOCIATES, L.P.,
DEFENDANTS-APPELLANTS,
AND COUNTY OF ERIE, DEFENDANT-RESPONDENT.

NESPER, FERBER & DIGIACOMO, LLP, AMHERST (GABRIEL J. FERBER OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

BENNETT, DIFILIPPO & KURTZHALTS, LLP, HOLLAND (RONALD P. BENNETT OF
COUNSEL), FOR PLAINTIFF-RESPONDENT TOWN OF AMHERST, A MUNICIPAL
CORPORATION.

GROSS, SHUMAN, BRIZDLE & GILFILLAN, P.C., BUFFALO (JOHN K. ROTTARIS OF
COUNSEL), FOR PLAINTIFF-RESPONDENT SWEET HOME CENTRAL SCHOOL DISTRICT.

BENGART & DEMARCO, LLP, TONAWANDA (SEAN R. MCDERMOTT OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered July 30, 2014. The order, insofar as appealed from, denied in part the motion of defendants Pepper Tree Heights Housing Co., Inc. and Pepper Tree Heights Associates, L.P. seeking to dismiss plaintiffs' amended complaint against them.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs, the motion is granted in its entirety, and the amended complaint against defendants Pepper Tree Heights Housing Co., Inc. and Pepper Tree Heights Associates, L.P. is dismissed.

Memorandum: Defendants-appellants (defendants) appeal from an order that denied in part their motion to dismiss the amended complaint against them. We reverse the order insofar as appealed from based on the reasoning set forth in our decision in *Town of Amherst v Brewster Mews Hous. Co., Inc.* (___ AD3d ___ [Nov. 20, 2015]).

Entered: November 20, 2015

Frances E. Cafarell
Clerk of the Court