

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

433.2

CA 10-02086

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, AND MARTOCHE, JJ.

RACHEL T. BUCHANAN, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

MATT DOMBROWSKI, INDIVIDUALLY, AND MAGRUDER'S
RESTAURANT & PUB INC., DEFENDANTS-APPELLANTS.
(APPEAL NO. 2.)

SLIWA & LANE, BUFFALO (PAUL F. MURAK OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (RODGER P. DOYLE, JR., OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Gerald J. Whalen, J.), entered September 15, 2010 in a personal injury action. The order, insofar as appealed from, granted plaintiff's motion, upon renewal, for summary judgment dismissing defendants' assumption of risk affirmative defense.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs, the motion upon renewal seeking dismissal of the affirmative defense of assumption of risk is denied and that affirmative defense is reinstated.

Same Memorandum as in *Buchanan v Dombrowski* ([appeal No. 1] ____ AD3d ____ [Apr. 29, 2011]).

Entered: April 29, 2011

Patricia L. Morgan
Clerk of the Court