

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

235

CA 15-00479

PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND CURRAN, JJ.

FRANCIS P. OSCIER, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JOANNE V. MUSTY, DEFENDANT-APPELLANT,
T&T CONCRETE, INC., DEFENDANT-RESPONDENT,
AND ANTHONY J. MINGARELLI, JR., DEFENDANT.
(APPEAL NO. 2.)

PERLA & PERLA, LLP, BUFFALO (MICHAEL M. METZGER OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

LAW OFFICES OF JOHN WALLACE, BUFFALO (LEO T. FABRIZI OF COUNSEL), FOR
DEFENDANT-APPELLANT.

CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (KEVIN E. LOFTUS OF
COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeals from an order of the Supreme Court, Erie County (Jeremiah J. Moriarty, III, J.), entered January 12, 2015. The order granted the motion of defendant T&T Concrete, Inc. for summary judgment and dismissed the complaint against it.

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

Same memorandum as in *Oscier v Musty* ([appeal No. 1] ____ AD3d ____ [Apr. 29, 2016]).

Entered: April 29, 2016

Frances E. Cafarell
Clerk of the Court