

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

810

CA 18-00016

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

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FRANCES J. TAITT, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

THE SHIPWRECK TAVERN, INC., DEFENDANT-APPELLANT.

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COSTELLO, COONEY & FEARON, PLLC, CAMILLUS (DONALD DIBENEDETTO OF COUNSEL), FOR DEFENDANT-APPELLANT.

BOUSQUET HOLSTEIN, PLLC, SYRACUSE (RYAN S. SUSER OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Jefferson County (James P. McClusky, J.), entered April 19, 2017. The order denied the motion of defendant for summary judgment dismissing the complaint.

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

Memorandum: Plaintiff commenced this action to recover damages for injuries that she sustained when she fell through a hole in a deck located on premises owned by defendant and leased to her employer. Supreme Court properly denied defendant's motion for summary judgment dismissing the complaint. Contrary to its contention, defendant failed to meet its initial burden of establishing that it did not affirmatively create the dangerous condition that resulted in plaintiff's injury, and, in any event, plaintiff raised an issue of fact (*see Boice v PCK Dev. Co., LLC*, 121 AD3d 1246, 1248-1249 [3d Dept 2014]). Contrary to its alternative contention, defendant failed to meet its initial burden of establishing that it functioned as an alter ego of plaintiff's employer (*see Cleary v Walden Galleria LLC*, 145 AD3d 1524, 1525 [4th Dept 2016]).

Entered: June 29, 2018

Mark W. Bennett  
Clerk of the Court