

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

426

CA 25-00228

PRESENT: LINDLEY, J.P., CURRAN, OGDEN, AND NOWAK, JJ.

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ERIE INSURANCE COMPANY, AS SUBROGEE OF  
MAY JEN CHINESE RESTAURANT, PLAINTIFF-APPELLANT,

V

ORDER

FUOCO ENTERPRISES, LLC, DOING BUSINESS AS  
ADVANCE HOOD CLEANING SOLUTIONS, AND ELWOOD FIRE  
PROTECTION, INC., DEFENDANTS-RESPONDENTS.

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RUPP PFALZGRAF LLC, BUFFALO (MARCO CERCONE OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

KNYCH & WHRITENOUR, LLC, EAST SYRACUSE (MATTHEW E. WHRITENOUR OF  
COUNSEL), FOR DEFENDANT-RESPONDENT FUOCO ENTERPRISES, LLC, DOING  
BUSINESS AS ADVANCE HOOD CLEANING SOLUTIONS.

SMITH SOVIK KENDRICK & SUGNET, P.C., WILLIAMSVILLE (ALAN J. BEDENKO OF  
COUNSEL), FOR DEFENDANT-RESPONDENT ELWOOD FIRE PROTECTION, INC.

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Appeal from an order of the Supreme Court, Erie County (Dennis E. Ward, J.), entered January 17, 2025, in a negligence and breach of contract action. The order granted the motions of defendants for summary judgment and dismissed the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at Supreme Court.

Entered: June 5, 2026

Ann Dillon Flynn  
Clerk of the Court