

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

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CA 13-01362

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

VEHDIN BAJRIC AND EMINA BAJRIC, INDIVIDUALLY,
AND AS HUSBAND AND WIFE, PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

ESTATE OF ZEHRA HETO, BY FARUK HETO,
ADMINISTRATOR, DEFENDANT-APPELLANT.

LAW OFFICE OF KAREN L. LAWRENCE, DEWITT (THERESA M. ZEHE OF COUNSEL),
FOR DEFENDANT-APPELLANT.

FRANK POLICELLI, UTICA, AND GEORGE F. ANEY, HERKIMER, FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Oneida County (Patrick F. MacRae, J.), entered April 29, 2013 in a personal injury action. The order, among other things, denied in part defendant's motion for summary judgment dismissing the complaint.

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

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by Vehdin Bajric (plaintiff) when he was removing a porch on a two-family residence then owned by Zehra Heto (decedent). Supreme Court properly denied that part of defendant's motion seeking summary judgment dismissing the common-law negligence claim. Plaintiffs allege that plaintiff's injury was caused by the defective condition of the premises, and we conclude that defendant failed to meet its initial burden of establishing that decedent lacked actual or constructive notice of the alleged defective condition (*see Shroul v Rochester Gas & Elec. Corp.*, 77 AD3d 1372, 1373). Because defendant failed to meet its initial burden, it is of no consequence that the court rejected plaintiffs' opposing papers as untimely (*see Roushia v Harvey*, 276 AD2d 970, 972).

Entered: March 28, 2014

Frances E. Cafarell
Clerk of the Court