

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

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CA 16-00066

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND LINDLEY, JJ.

NCA COMP, INC., AS ADMINISTRATOR OF CONTRACTORS
SELF-INSURANCE TRUST FUND, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

1289 CLIFFORD AVE., DOING BUSINESS AS EMPIRE
HEATING & AIR CONDITIONING, ET AL., DEFENDANTS,
MEMMINGER'S PAINTING, INC., AND HISTORICON, INC.,
DEFENDANTS-RESPONDENTS.
(APPEAL NO. 2.)

TREVETT CRISTO SALZER ANDOLINA, P.C., ROCHESTER (ALAN J. DEPETERS OF
COUNSEL), FOR PLAINTIFF-APPELLANT.

PHILLIPS LYTTLE LLP, BUFFALO (CRAIG R. BUCKI OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered October 2, 2015. The order granted the motion of defendant Memminger's Painting, Inc. and the cross motion of defendant Historicon, Inc. to dismiss plaintiff's complaint against them.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion and cross motion are denied, and the complaint against defendants Memminger's Painting, Inc. and Historicon, Inc. is reinstated.

Same memorandum as in *NCA Comp, Inc. v 1289 Clifford Ave., doing business as Empire Heating & Air Conditioning* ([appeal No. 1]) ___ AD3d ___ [June 9, 2017]).

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court