

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

1305

CA 17-00326

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, DEJOSEPH, AND WINSLOW, JJ.

JOANNE MORELAND, BOTH INDIVIDUALLY AND
DERIVATIVELY AS A MEMBER OF PCL, LLC,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

DAVID HUCK AND PCL, LLC, DEFENDANTS-RESPONDENTS.

SCHRÖDER, JOSEPH & ASSOCIATES, LLP, BUFFALO (JENNIFER L. FRIEDMAN OF
COUNSEL), FOR PLAINTIFF-APPELLANT.

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (MICHAEL J. WILLETT OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County
(Christopher J. Burns, J.), entered September 14, 2016. The order,
inter alia, granted the motion of defendants for summary judgment
dismissing the amended complaint, and denied the cross motion of
plaintiff to strike the affidavits of three witnesses, which were
submitted by defendants in support of their motion.

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

Memorandum: Plaintiff appeals from an order that, inter alia,
granted defendants' motion for summary judgment dismissing the amended
complaint and denied plaintiff's cross motion to strike the affidavits
of three witnesses, which were submitted by defendants in support of
their motion for summary judgment.

We affirm the order for reasons stated in the decision at Supreme
Court. We write only to address plaintiff's contention that the court
should have granted her cross motion to strike the affidavits of the
three subject witnesses because defendants failed to provide timely
expert witness disclosure for those witnesses pursuant to CPLR 3101
(d) (1) (i). We reject that contention. Even assuming, arguendo,
that each of the three witnesses provided expert testimony in his
affidavit, we note that CPLR 3212 (b) provides in relevant part that,
"[w]here an expert affidavit is submitted in support of, or opposition
to, a motion for summary judgment, the court shall not decline to
consider the affidavit because an expert exchange pursuant to [CPLR
3101 (d) (1) (i)] was not furnished prior to the submission of the

affidavit."

Entered: December 22, 2017

Mark W. Bennett
Clerk of the Court