

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 98 SSM 20
La Nona Jean Salinas,
Appellant,
v.
World Houseware Producing Co.,
Ltd., et al.,
Respondents.

Submitted by Robert Clore, for appellant.

Submitted by Thomas P. Lynch, for respondent World Houseware Producing Co., Ltd.

Submitted by Theresa C. Villani, for respondent Josie Accessories, Inc.

Submitted by Adam C. Calvert, for respondent Dolgencorp of Texas, Inc.

MEMORANDUM:

The order of the Appellate Division should be reversed, with costs, and the case remitted to Supreme Court for further proceedings in accordance with this memorandum.

The courts below erred in granting defendants’ motions for summary judgment on the basis that plaintiff failed to raise a triable issue of fact sufficient to defeat the motions. Although the plaintiff’s deposition testimony partially contradicted the factual conclusions reached by her expert witnesses, the expert opinions were based upon other record evidence and were neither speculative nor conclusory. Insofar as plaintiff raised genuine issues of fact on the element of causation, summary judgment should not have been granted on that ground (see Vega v Restani Constr. Corp., 18 NY3d 499, 503 [2012]; see generally Skelka v Metropolitan Tr. Auth., 76 AD2d 492, 497-498 [2d Dept 1980], lv denied 51 NY2d 709 [1980] & lv dismissed 51 NY2d 1008 [1980]). We remit for Supreme Court to consider the alternative grounds for summary judgment defendants raised in their motions and neither Supreme Court nor the Appellate Division reached.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and case remitted to Supreme Court, New York County, for further proceedings in accordance with the memorandum herein. Judges Rivera, Stein, Fahey and Wilson concur. Chief Judge DiFiore and Judges Garcia and Feinman dissent and vote to affirm for reasons stated in the Appellate Division memorandum decision (Salinas v World Houseware Producing Co., Ltd., 166 AD3d 493 [1st Dept 2018]).

Decided September 12, 2019