

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

424

CA 15-01553

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

DIANE M. GLADSTONE AND FRANCIS GLADSTONE,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

THOMAS FALLON, DEFENDANT-RESPONDENT.

ERNEST D. SANTORO, ESQ., P.C., ROCHESTER (ERNEST D. SANTORO OF
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

SMITH, SOVIK, KENDRICK & SUGNET, P.C., SYRACUSE (KAREN J. KROGMAN DAUM
OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Ontario County
(Frederick G. Reed, A.J.), entered December 4, 2014. The order
granted the motion of defendant for summary judgment and dismissed the
complaint.

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

Memorandum: Plaintiffs appeal from an order granting defendant's
motion for summary judgment dismissing the complaint, which seeks to
recover damages for personal injuries allegedly sustained by Diane M.
Gladstone (plaintiff) as a result of defendant's allegedly negligently
shaking her hand. We conclude that Supreme Court properly granted the
motion. Defendant met his burden on the motion by demonstrating that
it was not foreseeable that plaintiff might be injured as a result of
the handshake (*see generally Di Ponzio v Riordan*, 89 NY2d 578, 583-
586), and plaintiffs failed to raise a triable issue of fact (*see
generally Zuckerman v City of New York*, 49 NY2d 557, 562).
"Foreseeability of risk is an essential element of a fault-based
negligence cause of action because the community deems a person at
fault only when the injury-producing occurrence is one that could have
been anticipated" (*Di Ponzio*, 89 NY2d at 583). "It is [required only]
that the care be commensurate with the risk and danger" (*Nussbaum v
Lacopo*, 27 NY2d 311, 319). Here, "plaintiff failed to show that the
act of this [defendant] as to [her] had possibilities of danger so
many and apparent as to entitle [her] to be protected against the
doing of it . . . Against this kind of unlikely misfortune, the law
does not confer protection" (*id.*). We thus conclude that defendant
cannot be held liable for his alleged negligence in shaking

hands with plaintiff (see generally *Johnson v Vetter*, 1991 WL 348415, *1-3 [Ct of Common Pleas of Pa 1991]).

Entered: May 6, 2016

Frances E. Cafarell
Clerk of the Court