

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

992

CA 09-00459

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ.

STEPHEN DIMARCO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

PATRICK J. BOMBARD, INDIVIDUALLY AND AS A MEMBER OF BOMBARD BUICK PONTIAC GMC TRUCK, LLC, BOMBARD CAR CO., INC., BOMBARD BUICK PONTIAC GMC TRUCK, LLC, AND BOMBARD PONTIAC OLDSMOBILE GMC TRUCK, LLC, DEFENDANTS-RESPONDENTS.
(ACTION NO. 1.)

STEPHEN DIMARCO, PLAINTIFF-APPELLANT,

V

PATRICK J. BOMBARD, INDIVIDUALLY AND AS A MEMBER OF 100 MAIN STREET, LLC, 100 MAIN STREET, LLC, BOMBARD CAR CO., INC., AND BOMBARD BUICK PONTIAC GMC TRUCK, LLC, DEFENDANTS-RESPONDENTS.
(ACTION NO. 2.)

HISCOCK & BARCLAY, LLP, SYRACUSE (ALAN R. PETERMAN OF COUNSEL), FOR PLAINTIFF-APPELLANT.

COTE, LIMPert & VANDYKE, LLP, SYRACUSE (THEODORE H. LIMPert OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Onondaga County (John C. Cherundulo, A.J.), entered May 16, 2008. The order, inter alia, granted the motion of defendants seeking, inter alia, to vacate a settlement agreement.

It is hereby ORDERED that said appeal from the order insofar as it concerned the settlement agreement is unanimously dismissed and the order is otherwise affirmed with costs.

Memorandum: Supreme Court properly granted that part of defendants' motion seeking an order correcting the Referee's final report, inasmuch as the Referee acknowledged that his final report contained an error. We are unable to review plaintiff's further contention that the court erred in granting that part of defendants' motion seeking to vacate the parties' settlement agreement. Plaintiff failed to include the settlement agreement in the record on appeal,

thus rendering the record incomplete, and plaintiff " 'must suffer the consequences' " of submitting an incomplete record (*Cherry v Cherry*, 34 AD3d 1186, 1186).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court