

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

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CA 10-01712

PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ.

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JAMES J. FORTI AND LINDA A. FORTI,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

PORTVILLE FOREST PRODUCTS, INC.,  
DEFENDANT-APPELLANT.

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DIBBLE & MILLER, P.C., ROCHESTER (G. MICHAEL MILLER OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

THOMAS F. BRINKWORTH, BUFFALO, FOR PLAINTIFFS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Chautauqua County (James H. Dillon, J.), entered February 19, 2010. The judgment awarded plaintiffs the sum of \$89,500 against defendant.

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

Memorandum: Defendant appeals from a judgment entered following a nonjury trial that awarded plaintiffs \$89,500 in damages and costs resulting from defendant's actions in cutting down trees on plaintiffs' property. We affirm. Defendant contends that it had the right to cut down and remove trees from plaintiffs' property because, when Forestlands, Inc. (Forestlands) sold the subject property to plaintiffs in 1994, it reserved its timber rights. The president of Forestlands is also defendant's president. We reject defendant's contention inasmuch as the correction deed that was issued in 1995 omitted any reservation of timber rights to Forestlands. Contrary to defendant's contention, that deed constituted the final agreement between plaintiffs and Forestlands. " '[U]nder the merger doctrine, the land sale contract merged with the deed of conveyance and thereby extinguished the obligations and provisions of the contract upon the closing of title' " (*Stollsteimer v Kohler*, 77 AD3d 1259, 1260; see *Franklin Park Plaza, LLC v V & J Natl. Enters., LLC*, 57 AD3d 1450, 1451-1452; *Summit Lake Assoc. v Johnson*, 158 AD2d 764, 766). Although the original deed issued upon closing of the sale in 1994 reserved Forestlands' timber rights, the correction deed did not do so, and we conclude that the correction deed is controlling. Contrary to defendant's further contention, the record does not establish that the correction deed was executed upon Forestlands' "honest and excusable

mistake." We have reviewed defendant's remaining contentions and conclude that they are without merit.

Entered: April 1, 2011

Patricia L. Morgan  
Clerk of the Court