

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

1237

CA 17-00825

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

---

JOHN H. BAUSENWEIN, III, PLAINTIFF,

V

ORDER

THOMAS J. WELSH, INDIVIDUALLY, AND DOING  
BUSINESS AS TJW CUSTOM HOMES, INC., ET AL.,  
DEFENDANTS.

-----  
THOMAS J. WELSH, INDIVIDUALLY, AND DOING  
BUSINESS AS TJW CUSTOM HOMES, INC., TJW CUSTOM  
HOMES, INC., AND 299 MAIN STREET EA, INC.,  
INDIVIDUALLY, AND DOING BUSINESS AS TJW CUSTOM  
HOMES, THIRD-PARTY PLAINTIFFS-APPELLANTS,

V

TIMOTHY ALLISON, THIRD-PARTY DEFENDANT-RESPONDENT.

---

BARCLAY DAMON, LLP, BUFFALO (VINCENT G. SACCOMANDO OF COUNSEL), FOR  
THIRD-PARTY PLAINTIFFS-APPELLANTS.

BURGIO, CURVIN & BANKER, BUFFALO (STEVEN P. CURVIN OF COUNSEL), FOR  
THIRD-PARTY DEFENDANT-RESPONDENT.

-----  
Appeal from an order of the Supreme Court, Erie County (John F. O'Donnell, J.), entered August 25, 2016. The order, among other things, denied that part of the third-party plaintiffs' motion for summary judgment seeking dismissal of the second affirmative defense in the amended answer of third-party defendant.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at Supreme Court.

Entered: November 9, 2017

Mark W. Bennett  
Clerk of the Court