

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

**1151**

**CA 14-02066**

PRESENT: SMITH, J.P., PERADOTTO, CARNI, WHALEN, AND DEJOSEPH, JJ.

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JAMES J. SMISLOFF, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID P. STOTT, JR., 1390 PITTSFORD-MENDON ROAD, LLC, AND NORTHCOAST WINDOW CLEANING LIMITED LIABILITY COMPANY, DEFENDANTS-APPELLANTS.

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DAVID P. STOTT, JR., AND 1390 PITTSFORD-MENDON ROAD, LLC, THIRD-PARTY PLAINTIFFS-APPELLANTS,

V

GREGG SMISLOFF, THIRD-PARTY DEFENDANT-RESPONDENT.  
(APPEAL NO. 2.)

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ELLIOTT STERN CALABRESE, LLP, ROCHESTER (DAVID S. STERN OF COUNSEL), FOR DEFENDANTS-APPELLANTS AND THIRD-PARTY PLAINTIFFS-APPELLANTS.

LECLAIR KORONA GIORDANO COLE LLP, ROCHESTER (JEREMY M. SHER OF COUNSEL), FOR PLAINTIFF-RESPONDENT AND THIRD-PARTY DEFENDANT RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Kenneth R. Fisher, J.), entered August 14, 2014. The judgment awarded plaintiff money damages of \$72,800, plus interest, costs and disbursements.

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

Memorandum: Defendants-third-party plaintiffs (defendants) appeal from a judgment that, inter alia, dismissed pursuant to CPLR 3211 (a) (7) their third-party "counter-claim[s] and cause[s] of action" (counterclaims) asserting tortious interference of contract and conversion. Inasmuch as defendants failed to oppose that part of plaintiff's and third-party defendant's motion seeking to dismiss those counterclaims, defendants' contentions with respect thereto are not preserved for our review (*see Ladd v Hudson Val. Ambulance Serv.*, 142 AD2d 17, 21; *see generally Ciesinski v Town of Aurora*, 202 AD2d 984, 985).

Entered: November 20, 2015

Frances E. Cafarell  
Clerk of the Court