

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

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**CA 09-01720**

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GREEN, JJ.

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MILFORD C. DRAKE, K. CHARLES POWELL AND  
KEVIN POWELL, PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

DALE F. FOX, FOX & FOX AND FAULT LINE OIL  
CORPORATION, DEFENDANTS-RESPONDENTS.

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BRAUTIGAM & BRAUTIGAM, L.L.P., FREDONIA (MICHAEL K. BOBSEINE OF  
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

LAW OFFICES OF J. MICHAEL SHANE, ALLEGANY (J. MICHAEL SHANE OF  
COUNSEL), FOR DEFENDANTS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Cattaraugus County  
(Larry M. Himelein, A.J.), entered October 29, 2008. The judgment  
dismissed the complaint after a nonjury trial.

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

Memorandum: Plaintiffs commenced this action seeking, inter  
alia, damages for physical and environmental damage to their  
properties allegedly resulting from defendants' oil and gas  
exploration and production activities conducted pursuant to a series  
of oil and gas leases. Supreme Court properly dismissed the complaint  
following a nonjury trial. "[A] mineral estate in a tract of land  
carries with it the right to such access over the surface that may be  
reasonably necessary to carry on mining activities" (*Allen v*  
*Gouverneur Talc Co.*, 247 AD2d 691, 692; see *Frank v Fortuna Energy,*  
*Inc.*, 49 AD3d 1294). Here, plaintiffs failed to establish that  
defendants acted unreasonably in their installation or use of access  
roads to extract oil and gas or that plaintiffs are otherwise entitled  
to recover damages pursuant to the terms of the leases for restoration  
of their property prior to the completion of oil and gas production.  
We have considered plaintiffs' remaining contentions and conclude that  
they are lacking in merit.

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court