

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

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CA 09-02472

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND LINDLEY, JJ.

IN THE MATTER OF MERCO, INC.,
PETITIONER-APPELLANT,

V

ORDER

NIAGARA FALLS WATER BOARD,
RESPONDENT-RESPONDENT.

YARUSSI CONSTRUCTION, INC., RESPONDENT.

KING & KING, LLP, LONG ISLAND CITY (PETER M. KUTIL OF COUNSEL), AND
ERNSTROM & DRESTE, LLP, ROCHESTER, FOR PETITIONER-APPELLANT.

HARRIS BEACH PLLC, BUFFALO (KIMBERLY A. COLAIACOVO OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

ROSCETTI & DECASTRO, P.C., NIAGARA FALLS (DAMON A. DECASTRO OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court,
Niagara County (Ralph A. Boniello, III, J.), entered November 30, 2009
in a proceeding pursuant to CPLR article 78. The judgment dismissed
the petition and vacated a temporary restraining order.

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

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court