

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

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CA 10-00573

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

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

VILLAGE OF HERKIMER, DEFENDANT-RESPONDENT,
AND COUNTY OF HERKIMER, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

ROBERT J. MALONE, COUNTY ATTORNEY, HERKIMER (LORRAINE H. LEWANDROWSKI
OF COUNSEL), FOR DEFENDANT-APPELLANT.

KERNAN AND KERNAN, P.C., UTICA (MICHAEL H. STEPHENS OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

LONGSTREET & BERRY, LLP, SYRACUSE (MICHAEL LONGSTREET OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeals from a judgment (denominated order) of the Supreme Court, Herkimer County (Michael E. Daley, J.), entered June 17, 2009. The judgment denied the motion of defendant County of Herkimer for summary judgment and granted the motion of defendant Village of Herkimer for summary judgment.

It is hereby ORDERED that the appeal by defendant County of Herkimer from that part of the judgment denying its motion for summary judgment is unanimously dismissed (*see Loafin' Tree Rest. v Pardi* [appeal No. 1], 162 AD2d 985) and the judgment is modified on the law by denying the motion of defendant Village of Herkimer in its entirety, reinstating the complaint against that defendant and reinstating the cross claims of defendant County of Herkimer and as modified the judgment is affirmed without costs.

Same Memorandum as in *Herkimer County Indus. Dev. Agency v Village of Herkimer* ([appeal No. 2] ___ AD3d ___ [May 6, 2011]).

Entered: May 6, 2011

Patricia L. Morgan
Clerk of the Court