

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

1120.1

CA 11-01638

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

PAUL MARINACCIO, SR., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

TOWN OF CLARENCE, DEFENDANT,
AND KIEFFER ENTERPRISES, INC.,
DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

GOLDBERG SEGALLA LLP, BUFFALO, PHILLIPS LYTLE LLP (MICHAEL B. POWERS
OF COUNSEL), FOR DEFENDANT-APPELLANT.

LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOSEPH J. MANNA OF COUNSEL),
FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Frederick J. Marshall, J.), entered April 28, 2011. The order settled the record for an appeal from a judgment entered November 24, 2009.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by providing that the opposing papers and reply papers with respect to plaintiff's motion in limine seeking to preclude the testimony of an appraisal expert for defendant Town of Clarence and the order determining that motion shall be included in the record on appeal in appeal No. 1 and as modified the order is affirmed without costs.

Same Memorandum as in *Marinaccio v Town of Clarence* ([appeal No. 1] ___ AD3d ___ [Dec. 30, 2011]).

Entered: December 30, 2011

Frances E. Cafarell
Clerk of the Court