

MOTION NO. (688/22) CA 22-00399. -- LAURA CICERO, PLAINTIFF-APPELLANT, V PATRICIA O'ROURKE AND VERONA STREET ANIMAL SOCIETY, DEFENDANTS-RESPONDENTS.

-- Motion for reargument or leave to appeal to the Court of Appeals be and the same hereby is granted in part and, upon reargument, the memorandum and order entered December 23, 2022 (211 AD3d 1463 [4th Dept 2022]) is amended by deleting the seventh paragraph of the memorandum. PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, AND MONTOUR, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (67/23) CA 21-01624. -- WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2007-CPI, ASSET-BACKED

CERTIFICATES, SERIES 2007-CPI, PLAINTIFF-APPELLANT, V RODNEY C. NEWHOUSE, DEFENDANT-RESPONDENT, ET AL., DEFENDANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, AND OGDEN, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (150/23) CA 22-00155. -- KARLEY A.G. MUELLER,

PLAINTIFF-APPELLANT-RESPONDENT, V CITY OF BUFFALO, BUFFALO POLICE DEPARTMENT, BRANDEN D. LOWE, DEFENDANTS-RESPONDENTS-APPELLANTS, ET AL.,

DEFENDANT. (ACTION NO. 2.) JYIRAH C. BAILEY,

PLAINTIFF-APPELLANT-RESPONDENT, V CITY OF BUFFALO, BUFFALO POLICE

DEPARTMENT AND BRANDEN D. LOWE, DEFENDANTS-RESPONDENTS-APPELLANTS. (ACTION

NO. 3.) JAMES BARCLAY, IV, PLAINTIFF-APPELLANT-RESPONDENT, V CITY OF

BUFFALO, BUFFALO POLICE DEPARTMENT, BRANDEN D. LOWE,

DEFENDANTS-RESPONDENTS-APPELLANTS, ET AL., DEFENDANT. (ACTION NO. 4.) NEW

YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY, AS SUBROGEE OF CHELSEA ELLIS,
PLAINTIFF-RESPONDENT, V CITY OF BUFFALO, BRANDEN D. LOWE,
DEFENDANTS-APPELLANTS, ET AL., DEFENDANT. (ACTION NO. 5.) -- Motion for
leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J.,
LINDLEY, CURRAN, BANNISTER, AND MONTOUR, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (188/23) CA 22-00289. -- BARBARA HART, PLAINTIFF-APPELLANT, V
CITY OF BUFFALO, ET AL., DEFENDANTS, AND ERIE COUNTY, DEFENDANT-RESPONDENT.
-- Motion for reargument or leave to appeal to the Court of Appeals denied.
PRESENT: SMITH, J.P., CURRAN, BANNISTER, AND MONTOUR, JJ. (Filed Nov. 17,
2023.)

MOTION NOS. (236-237/23) CA 22-00102 AND CA 22-00104. -- CARMETRIS HARPER
AND HORACE HARPER, PLAINTIFFS-APPELLANTS, V SALEH N. AL-SHABY, ALI MOHAMMED
SALEH AND ADEN ENTERPRISES, INC., DOING BUSINESS AS GREEN FARM MARKET,
DEFENDANTS-RESPONDENTS. (APPEAL NOS. 1 AND 2.) -- Motions for reargument
or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P.,
LINDLEY, CURRAN, OGDEN, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (288/23) CA 22-00469. -- AMANDA DIPASQUALE AND DYLAN DIPASQUALE,
PLAINTIFFS-APPELLANTS, V OONA LIM, M.D., HEIDI ZIELINSKI, C.N.M., MIRANDA
HARRIS-GLOCKER, M.D., MARY M. WILSCH, M.D., WILLIAM O'MALLEY, M.D., MATTHEW
BRESLER, M.D., GENESEE VALLEY OBSTETRICS & GYNECOLOGY, P.C., WOMEN

GYNECOLOGY AND CHILDBIRTH ASSOCIATES, P.C., HIGHLAND HOSPITAL AND UNIVERSITY OF ROCHESTER MEDICAL CENTER, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., BANNISTER, MONTOUR, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (309/23) CA 22-00380. -- IN THE MATTER OF COLUMBUS MONUMENT CORPORATION, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO THE COLUMBUS MONUMENT ASSOCIATION, NICHOLAS J. PIRRO, BOB GARDINO, JOANNE GARDINO, JAMES ALBANESE, MIKE ALBANESE, KATIE ALBANESE, MARY EMILY ALIBRANDI, SILVIO ASCENZO, LAUREN ASCENZO, BRENDA WENDY LEE BOUSEFELD, ANDREA BUCCI, ANGELO CHIODO, MARGARET CHIODO, JOAN CHRISTENSEN, GABRIEL DIGENOVA, PETER DIGENOVA, GENE FISCH, ANDRE GRASSO, KEVIN KANE, SHANNON KENNEDY, BILLE KINNE, JOE LEPIANE, TED MASSEY, RANDY POTTER, JOSEPH RUSSO, GERARADA SCUDERI, CHARLES TREMPER, AND JOHN VIGLIOTTI, PETITIONERS-PLAINTIFFS-RESPONDENTS, V CITY OF SYRACUSE, RESPONDENT-DEFENDANT-APPELLANT, AND BEN WALSH, INDIVIDUALLY AND AS MAYOR OF THE CITY OF SYRACUSE, RESPONDENT-DEFENDANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: LINDLEY, J.P., BANNISTER, MONTOUR, OGDEN, AND NOWAK, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (399/23) CA 22-01660. -- BRIAN D. HENRY AND JILLIAN TOMER, PLAINTIFFS-RESPONDENTS, V BUFFALO MANAGEMENT GROUP, INC.,

DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (400/23) CA 22-01123. -- LARDON CONSTRUCTION CORP., PLAINTIFF-APPELLANT, V MARK CERRONE, INC., DEFENDANT-RESPONDENT, ET AL., DEFENDANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (415/23) CA 22-00884. -- JOSEPH A. ROSS, PLAINTIFF-RESPONDENT, V NORTHEAST DIVERSIFICATION, INC., AND HAMBURG CENTRAL SCHOOL DISTRICT, DEFENDANTS-APPELLANTS. -- NORTHEAST DIVERSIFICATION, INC., AND HAMBURG CENTRAL SCHOOL DISTRICT, THIRD-PARTY PLAINTIFFS-RESPONDENTS-APPELLANTS, V E.J. MILITELLO CONCRETE, INC., THIRD-PARTY DEFENDANT-APPELLANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CURRAN, BANNISTER, AND OGDEN, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (446/23) KA 20-00259. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LUIS FERNANDEZ, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., CURRAN, MONTOUR, AND OGDEN, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (452/23) CA 22-01522. -- RICHARD METCALF, SR., AS ADMINISTRATOR OF THE ESTATE OF RICHARD METCALF, JR., DECEASED, PLAINTIFF-RESPONDENT-APPELLANT, V COUNTY OF ERIE, ROBERT DEE, MATTHEW CROSS, SCOTT EVANS, MICHAEL ANDERSON, MATTHEW O'CONNELL, EDWARD KAWALEK, ROBERT STATES, SCOTT EMERLING, RICHARD FRYS, DEFENDANTS-APPELLANTS-RESPONDENTS, ET AL., DEFENDANTS. -- Motions for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CURRAN, MONTOUR, AND OGDEN, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (486/23) TP 22-00292. -- IN THE MATTER OF WASHINGTON CENTER FOR REHABILITATION AND NURSING HOME, AND ALBERT B. NOLETTE, WASHINGTON COUNTY TREASURER, AS TEMPORARY LIMITED ADMINISTRATOR FOR THE ESTATE OF SALLY BARDEN, DECEASED, PETITIONERS, V NEW YORK STATE DEPARTMENT OF HEALTH, RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., BANNISTER, MONTOUR, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (488/23) CA 22-01242. -- UTICA MUTUAL INSURANCE COMPANY, PLAINTIFF-RESPONDENT, V AMERICAN RE-INSURANCE COMPANY, NOW KNOWN AS MUNICH REINSURANCE AMERICA, INC., DEFENDANT-APPELLANT. -- Motion for reargument and clarification denied. PRESENT: SMITH, J.P., BANNISTER, MONTOUR, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (505/23) OP 23-00057. -- IN THE MATTER OF NIAGARA FALLS REDEVELOPMENT, LLC, AND BLUEAPPLE PROPERTIES INC., PETITIONERS, V THE CITY OF NIAGARA FALLS, RESPONDENT. -- Motion for leave to renew denied.

PRESENT: SMITH, J.P., LINDLEY, CURRAN, MONTOUR, AND OGDEN, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (525.1/23) CA 22-00816. -- WEBSTER GOLF CLUB, INC., AND B&C GOLF, INC., PLAINTIFFS-RESPONDENTS-APPELLANTS, V MONROE COUNTY WATER AUTHORITY, DEFENDANT-APPELLANT-RESPONDENT, O'BRIEN & GERE ENGINEERS, INC., LECHASE CONSTRUCTION SERVICES, LLC, FISHER ASSOCIATES, P.E., L.S., L.A., D.P.C., DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS. -- Motion for reargument or leave to appeal to the Court of Appeals be and the same hereby is granted in part and, upon reargument, the memorandum and order entered August 11, 2023 (219 AD3d 1136 [4th Dept 2023]) is amended by deleting the second through fourth sentences of the fifth paragraph of the memorandum and substituting the following sentences: The amended complaint, however, characterizes the specific water allegedly interfered with as water that "originate[d] on the property of [MCWA]," consisting of "wetlands on MCWA property, rainwater, groundwater and/or underground springs." Thus, MCWA established, through plaintiffs' own pleadings, that the specific water allegedly interfered with by MCWA was surface water. A landowner may alter surface waters "although thereby the water is prevented from reaching [the land] and is retained upon the lands above" and although it "prevents the water [from] reaching a natural water-course, as it

formerly did" (*Barkley*, 86 NY at 147-148; see generally *Friedland v State of New York*, 35 AD2d 755, 756 [3d Dept 1970]). PRESENT: WHALEN, P.J., SMITH, BANNISTER, MONTOUR, AND DELCONTE, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (554/23) CA 22-00551. -- CAROLETTE MEADOWS, PLAINTIFF-RESPONDENT, V RACHEL ECKERT, DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)

MOTION NO. (564/23) CA 22-01764. -- GARY J. LAVINE, PLAINTIFF-RESPONDENT-APPELLANT, V RITA M. GLAVIN, DEFENDANT-APPELLANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., LINDLEY, OGDEN, AND GREENWOOD, JJ. (Filed Nov. 17, 2023.)