

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

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CA 08-01048

PRESENT: SCUDDER, P.J., HURLBUTT, CENTRA, GREEN, AND GORSKI, JJ.

JOHN M. SUMMERS, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER, ET AL., DEFENDANTS,
AND EXPORT FINANCE INSURANCE CORPORATION,
DEFENDANT-RESPONDENT.
(APPEAL NO. 2.)

HARRIS BEACH PLLC, PITTSFORD (PHILIP G. SPELLANE OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

UNDERBERG & KESSLER LLP, ROCHESTER (GORDON J. LIPSON OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Stephen K. Lindley, J.), entered February 27, 2008 in an action for a declaratory judgment and an injunction. The order granted summary judgment to defendant Export Finance Insurance Corporation.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by dismissing the second amended complaint against defendant Export Finance Insurance Corporation and as modified the order is affirmed without costs.

Same Memorandum as in *Summers v City of Rochester* ([appeal No. 1] ____ AD3d ____ [Mar. 20, 2009]).

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court