

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

**991**

**CA 08-02267**

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

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RICHARD HUNT, PLAINTIFF,

V

MEMORANDUM AND ORDER

CIMINELLI-COWPER CO., INC., ET AL., DEFENDANTS.

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JAMESTOWN COMMUNITY COLLEGE, JAMESTOWN COMMUNITY COLLEGE REGION AND JAMESTOWN COMMUNITY COLLEGE REGIONAL BOARD OF TRUSTEES, THIRD-PARTY PLAINTIFFS-APPELLANTS,

V

INGALLS SITE DEVELOPMENT, INC., FORMERLY KNOWN AS DAVID OGIONY DEVELOPMENT CO., INC., AHLSTROM-SCHAEFFER ELECTRIC CORPORATION AND PETTIT & PETTIT, INC., THIRD-PARTY DEFENDANTS-RESPONDENTS.  
(APPEAL NO. 2.)

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KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (THERESA J. PULEO OF COUNSEL), FOR THIRD-PARTY PLAINTIFFS-APPELLANTS.

BROWN & KELLY, LLP, BUFFALO (LISA T. SOFFERIN OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT INGALLS SITE DEVELOPMENT, INC., FORMERLY KNOWN AS DAVID OGIONY DEVELOPMENT CO., INC.

CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (THOMAS J. SPEYER OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT AHLSTROM-SCHAEFFER ELECTRIC CORPORATION.

BAXTER SMITH & SHAPIRO, P.C., WEST SENECA (WILLIAM BOLTRAK OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT PETTIT & PETTIT, INC.

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Appeal from an order of the Supreme Court, Erie County (Rose H. Sconiers, J.), entered July 28, 2008 in a personal injury action. The order, inter alia, granted the motions of third-party defendants for summary judgment dismissing the amended third-party complaint and all cross claims against them.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by denying the motion of third-party defendant Ingalls Site Development, Inc., formerly known as David Ogiony Development Co., Inc., and reinstating the amended third-party

complaint and cross claim against it, and by denying in part the motion of third-party defendant Pettit & Pettit, Inc. and reinstating the third and fourth causes of action and cross claim against it, and as modified the order is affirmed without costs.

Same Memorandum as in *Hunt v Ciminelli-Cowper Co., Inc.* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [Oct. 9, 2009]).

Entered: October 9, 2009

Patricia L. Morgan  
Clerk of the Court