

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

1700

CA 09-01553

PRESENT: SMITH, J.P., FAHEY, CARNI, AND GREEN, JJ.

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AIR CHARTER TEAM, INC., PLAINTIFF-RESPONDENT,

V

ORDER

CATERING SPECIALISTS, LLC, DEFENDANT-APPELLANT.

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CULLEY, MARKS, TANENBAUM & PEZZULO, LLP, ROCHESTER (FRANK G. MONTEMALO OF COUNSEL), FOR DEFENDANT-APPELLANT.

EVANS FOX LLP, ROCHESTER (RICHARD J. EVANS OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (Kenneth R. Fisher, J.), entered July 15, 2009 in a breach of contract action. The order, inter alia, granted the motion of plaintiff to take the oral deposition of a nonparty.

Now, upon reading and filing the stipulation discontinuing appeal signed by the attorneys for the parties on October 14, 2009,

It is hereby ORDERED that said appeal is unanimously dismissed without costs upon stipulation.

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court