

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

37

CA 09-01720

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GREEN, JJ.

MILFORD C. DRAKE, K. CHARLES POWELL AND
KEVIN POWELL, PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

DALE F. FOX, FOX & FOX AND FAULT LINE OIL
CORPORATION, DEFENDANTS-RESPONDENTS.

BRAUTIGAM & BRAUTIGAM, L.L.P., FREDONIA (MICHAEL K. BOBSEINE OF
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

LAW OFFICES OF J. MICHAEL SHANE, ALLEGANY (J. MICHAEL SHANE OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Cattaraugus County
(Larry M. Himelein, A.J.), entered October 29, 2008. The judgment
dismissed the complaint after a nonjury trial.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking, inter
alia, damages for physical and environmental damage to their
properties allegedly resulting from defendants' oil and gas
exploration and production activities conducted pursuant to a series
of oil and gas leases. Supreme Court properly dismissed the complaint
following a nonjury trial. "[A] mineral estate in a tract of land
carries with it the right to such access over the surface that may be
reasonably necessary to carry on mining activities" (*Allen v*
Gouverneur Talc Co., 247 AD2d 691, 692; *see Frank v Fortuna Energy,*
Inc., 49 AD3d 1294). Here, plaintiffs failed to establish that
defendants acted unreasonably in their installation or use of access
roads to extract oil and gas or that plaintiffs are otherwise entitled
to recover damages pursuant to the terms of the leases for restoration
of their property prior to the completion of oil and gas production.
We have considered plaintiffs' remaining contentions and conclude that
they are lacking in merit.

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court