

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

**236**

**CA 09-01928**

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND LINDLEY, JJ.

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KOREY P. KUSTES, PLAINTIFF-RESPONDENT,

V

ORDER

NICOLE S. CUMMINGS, ET AL., DEFENDANTS,  
AND JOSEPH SHEEHAN, JR., DEFENDANT-APPELLANT.

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CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (THOMAS P. KAWALEC OF COUNSEL), FOR DEFENDANT-APPELLANT.

BOUVIER PARTNERSHIP, LLP, BUFFALO (RAFAEL O. GOMEZ OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Rose H. Sconiers, J.), entered June 3, 2009 in a personal injury action. The order, insofar as appealed from, denied in part the motion of defendant Joseph Sheehan, Jr. for summary judgment.

Now, upon reading and filing the stipulation of discontinuance of appeal signed by the attorneys for the parties to the appeal on December 28, 2009,

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

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court