

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

**239**

**CA 09-02472**

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

---

IN THE MATTER OF MERCO, INC.,  
PETITIONER-APPELLANT,

V

ORDER

NIAGARA FALLS WATER BOARD,  
RESPONDENT-RESPONDENT.

-----  
YARUSSI CONSTRUCTION, INC., RESPONDENT.

---

KING & KING, LLP, LONG ISLAND CITY (PETER M. KUTIL OF COUNSEL), AND  
ERNSTROM & DRESTE, LLP, ROCHESTER, FOR PETITIONER-APPELLANT.

HARRIS BEACH PLLC, BUFFALO (KIMBERLY A. COLAIACOVO OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

ROSCETTI & DECASTRO, P.C., NIAGARA FALLS (DAMON A. DECASTRO OF  
COUNSEL), FOR RESPONDENT.

---

Appeal from a judgment (denominated order) of the Supreme Court,  
Niagara County (Ralph A. Boniello, III, J.), entered November 30, 2009  
in a proceeding pursuant to CPLR article 78. The judgment dismissed  
the petition and vacated a temporary restraining order.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs for reasons stated in the decision  
at Supreme Court.

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court