

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

473

CA 09-02469

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, LINDLEY, AND SCONIERS, JJ.

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WYNIT, INC., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

SMARTPARTS, INC. AND RBS ASSET FINANCE INC.,  
DOING BUSINESS AS RBS BUSINESS CAPITAL,  
DEFENDANTS-RESPONDENTS.

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HISCOCK & BARCLAY, LLP, SYRACUSE (DOUGLAS J. NASH OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

METZ LEWIS LLC, PITTSBURGH, PENNSYLVANIA (KENNETH S. KORNACKI, OF THE  
PENNSYLVANIA BAR, ADMITTED PRO HAC VICE, OF COUNSEL), BUCHANAN  
INGERSOLL & ROONEY PC, BUFFALO, FOR DEFENDANT-RESPONDENT RBS ASSET  
FINANCE INC., DOING BUSINESS AS RBS BUSINESS CAPITAL.

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Appeal from an order of the Supreme Court, Onondaga County  
(Deborah H. Karalunas, J.), entered August 25, 2009. The order, inter  
alia, granted the motion of defendant RBS Asset Finance Inc., doing  
business as RBS Business Capital, to dismiss the amended complaint  
against it.

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

Memorandum: Plaintiff appeals from an order granting the motion  
of defendant RBS Asset Finance Inc., doing business as RBS Business  
Capital (RBS), seeking dismissal of the amended complaint against it  
pursuant to, inter alia, CPLR 3211 (a) (4) on the ground that there is  
another action pending. We affirm for reasons stated in the decision  
at Supreme Court. We add only that, as the court properly determined,  
the other action commenced by RBS in Pennsylvania involves the same  
parties to this action and, unlike this action, encompasses all of the  
disputes between the parties. Thus, the court did not abuse its  
discretion in dismissing the action sua sponte against defendant  
Smartparts, Inc., the remaining defendant, inasmuch as the  
Pennsylvania action will be dispositive with respect to that defendant  
as well.

Entered: June 11, 2010

Patricia L. Morgan  
Clerk of the Court