

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

1354.2

CA 09-02449

PRESENT: SMITH, J.P., FAHEY, LINDLEY, SCONIERS, AND GORSKI, JJ.

UTICA MUTUAL INSURANCE COMPANY,
PLAINTIFF-APPELLANT,

V

ORDER

MCATEER & FITZGERALD, INC., KENYON B.
FITZGERALD, JR., DEFENDANTS-RESPONDENTS,
ET AL., DEFENDANT.
(APPEAL NO. 2.)

BOND, SCHOENECK & KING, PLLC, SYRACUSE (BRIAN J. BUTLER OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

von SIMSON & CHIN LLP, BUFFALO (CHARLES von SIMSON OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Oneida County (Anthony F. Shaheen, J.), entered October 19, 2009 in a breach of contract action. The order denied the motion of plaintiff for leave to reargue the denial of its motion for summary judgment.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (*see Empire Ins. Co. v Food City*, 167 AD2d 983, 984).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court