

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

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CA 10-01996

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

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EARTH ENERGY CONSULTANTS, LLC,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY,  
SENECA COUNTY ECONOMIC DEVELOPMENT CORPORATION,  
AND ROBERT J. ARONSON, EXECUTIVE DIRECTOR,  
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY,  
DEFENDANTS-RESPONDENTS.

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ZDARSKY SAWICKI & AGOSTINELLI LLP, BUFFALO (DONALD G. POWELL OF  
COUNSEL), FOR PLAINTIFF-APPELLANT.

HARRIS BEACH PLLC, PITTSFORD (DALE A. WORRALL OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Seneca County (Dennis F. Bender, A.J.), entered June 2, 2010 in a declaratory judgment action. The judgment granted the motion of defendants for summary judgment dismissing the complaint and denied the cross motion of plaintiff to compel disclosure.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the provision dismissing the complaint and granting judgment in favor of defendants as follows:

It is ADJUDGED and DECLARED that defendants have no duty to execute or to record an assignment to plaintiff of a portion of the overriding royalty interest in any oil and/or natural gas produced from the subject property

and as modified the judgment is affirmed without costs.

Memorandum: We conclude that Supreme Court properly resolved the merits of the action in favor of defendants for the reasons stated in its decision. The court erred, however, in granting judgment to defendants dismissing the complaint rather than declaring the rights of the parties (*see Maurizzio v Lumbermens Mut. Cas. Co.*, 73 NY2d 951, 954). We therefore modify the judgment accordingly.

Entered: May 6, 2011

Patricia L. Morgan  
Clerk of the Court