

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

1187

CA 11-00337

PRESENT: SCUDDER, P.J., SMITH, SCONIERS, GORSKI, AND MARTOCHE, JJ.

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HERBERT SHAPIRO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

TONY'S CULVER ATLANTIC, INC., DEFENDANT,  
MICHAEL FLORIO AND ANTHONY FLORIO,  
DEFENDANTS-RESPONDENTS.

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HERBERT SHAPIRO, PLAINTIFF-APPELLANT PRO SE.

MICHAEL FLORIO, DEFENDANT-RESPONDENT PRO SE.

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Appeal from an order of the Monroe County Court (Patricia D. Marks, J.), entered June 16, 2010. The order affirmed a decision of the Rochester City Court (John E. Elliott, J.), dated December 11, 2008, dismissing plaintiff's claim.

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

Memorandum: Plaintiff commenced this action in City Court seeking damages for defendants' negligent repair of the air conditioning system in plaintiff's vehicle. After trial, City Court dismissed the claim in a decision recorded on a form entitled "Civil Trial Record of Court Activity." Plaintiff appeals from an order entered in County Court affirming the decision of City Court. An appeal as of right to this Court may be taken from an order of a county court that "determines an appeal from a judgment of a lower court" (CPLR 5703 [b]), or that determines an appeal from an order of a lower court that is dispositive of the rights of the parties and is thus tantamount to a judgment (*see Pigler v Adam, Meldrum & Anderson Co.*, 195 AD2d 1011; *see also* CPLR 5011). Here, however, the record on appeal contains neither a judgment nor a final order that was entered in City Court, and there is nothing in the record establishing that a judgment or final order was ever filed in the City Court Clerk's Office. Thus, plaintiff's appeal to this Court must be dismissed (*see generally* CPLR 5703 [b]; *Kuhn v Kuhn*, 129 AD2d 967).

Entered: December 23, 2011

Frances E. Cafarell  
Clerk of the Court