

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

**941**

**CA 18-01821**

PRESENT: CENTRA, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

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GARY E. WARREN AND MARY WARREN,  
PLAINTIFFS-RESPONDENTS,

V

ORDER

E.J. MILITELLO CONCRETE, INC., DESTRO &  
BROTHERS CONCRETE COMPANY, INC., AND  
HATCH MOTT MACDONALD NY, INC.,  
DEFENDANTS-APPELLANTS.  
(APPEAL NO. 2.)

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CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (THOMAS J. SPEYER OF  
COUNSEL), FOR DEFENDANT-APPELLANT E.J. MILITELLO CONCRETE, INC.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, ROCHESTER (MATTHEW C. LENAHAN OF  
COUNSEL), FOR DEFENDANT-APPELLANT DESTRO & BROTHERS CONCRETE COMPANY,  
INC.

NASH CONNORS, P.C., BUFFALO (JAMES J. NASH OF COUNSEL), FOR  
DEFENDANT-APPELLANT HATCH MOTT MACDONALD NY, INC.

PAUL WILLIAM BELTZ, P.C., BUFFALO (CATHERINE B. FOLEY OF COUNSEL), FOR  
PLAINTIFFS-RESPONDENTS.

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Appeals from an order of the Supreme Court, Erie County (Donna M. Siwek, J.), entered August 30, 2018. The order, among other things, denied the motions of defendants Hatch Mott MacDonald NY, Inc. and E.J. Militello Concrete, Inc., for summary judgment and denied the cross motion of defendant Destro & Brothers Concrete Company, Inc. for indemnification.

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

Entered: November 15, 2019

Mark W. Bennett  
Clerk of the Court