

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

**455**

**CA 16-00808**

PRESENT: WHALEN, P.J., SMITH, CENTRA, TROUTMAN, AND SCUDDER, JJ.

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PETER D. WATERMAN AND CAROL WATERMAN,  
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

CNH AMERICA LLC AND MONROE TRACTOR &  
IMPLEMENT CO., INC., DEFENDANTS-RESPONDENTS.

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CNH AMERICA LLC, THIRD-PARTY PLAINTIFF,

V

WOODS EQUIPMENT COMPANY, THIRD-PARTY  
DEFENDANT-RESPONDENT.

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LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOHN A. COLLINS OF COUNSEL),  
FOR PLAINTIFFS-APPELLANTS.

NIXON PEABODY LLP, BUFFALO (VIVIAN M. QUINN OF COUNSEL), FOR  
DEFENDANT-RESPONDENT AND THIRD-PARTY PLAINTIFF CNH AMERICA LLC.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, BUFFALO (ALYSSA JORDAN OF  
COUNSEL), FOR DEFENDANT-RESPONDENT MONROE TRACTOR & IMPLEMENT CO.,  
INC.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (HENRY A. ZOMERFELD OF  
COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Patrick  
H. NeMoyer, J.), entered July 8, 2015. The order granted in part the  
motions of defendants and the cross motion of third-party defendant  
for summary judgment.

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

Memorandum: We conclude, for reasons stated in the decision at  
Supreme Court, that the motions of defendant-third-party plaintiff,  
CNH America LLC, and defendant Monroe Tractor & Implement Co., Inc.  
and the cross motion of third-party defendant were properly granted to  
the extent that they sought summary judgment dismissing plaintiffs'  
claims for failure to warn. Any other issues raised by plaintiffs in  
their notice of appeal are deemed abandoned (*see Beatty v Williams*,

227 AD2d 912, 912; *Ciesinski v Town of Aurora*, 202 AD2d 984, 984).

Entered: May 5, 2017

Frances E. Cafarell  
Clerk of the Court