

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

356

CA 22-01250

PRESENT: PERADOTTO, J.P., CURRAN, OGDEN, AND GREENWOOD, JJ.

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MICHELLE BURNS AND RICHARD S. BURNS, JR.,  
PLAINTIFFS-APPELLANTS,

V

ORDER

DESTRO & BROTHERS CONCRETE COMPANY, INC.,  
DEFENDANT-RESPONDENT,  
ET AL., DEFENDANTS.  
(APPEAL NO. 2.)

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STEPHEN R. FOLEY, LLC, BUFFALO (ZACHARY S. DRAGONETTE OF COUNSEL), FOR  
PLAINTIFFS-APPELLANTS.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, BUFFALO (CHRISTOPHER R. BITAR OF  
COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Donna M. Siwek, J.), entered February 8, 2022. The order, among other things, granted the motion of defendant Destro & Brothers Concrete Company, Inc. for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at Supreme Court.

Entered: April 28, 2023

Ann Dillon Flynn  
Clerk of the Court