

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

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CA 21-00928

PRESENT: SMITH, J.P., CENTRA, NEMOYER, CURRAN, AND BANNISTER, JJ.

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DAVID A. BYINGTON, PLAINTIFF-RESPONDENT,

V

ORDER

NICHOLAS J. HULING, PHELPS SUNGAS, INC.,  
DEFENDANTS-RESPONDENTS,  
AND TIMOTHY LEE MOON, DEFENDANT-APPELLANT.

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SMITH SOVIK KENDRICK SUGNET, P.C., WILLIAMSVILLE (JACLYN S. WANEMAKER  
OF COUNSEL), FOR DEFENDANT-APPELLANT.

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Appeal from an order of the Supreme Court, Wayne County (John B. Nesbitt, A.J.), entered June 10, 2021. The order denied the motion of defendant Timothy Lee Moon for summary judgment dismissing the amended complaint and all cross claims against him.

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

Entered: June 3, 2022

Ann Dillon Flynn  
Clerk of the Court