

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

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CA 22-00813

PRESENT: SMITH, J.P., LINDLEY, CURRAN, OGDEN, AND GREENWOOD, JJ.

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JAMES V. PAIGE, JR., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

DEERVIEW, LLC, MARK SHANNON, JAMIE SHANNON,  
JONATHAN WISE, SENNECA TREY STONE AND ARIANN  
ABRA POLASKY, DEFENDANTS-RESPONDENTS.

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WRIGHT CALIMERI, PLLC, JAMESTOWN (MATTHEW B. SCHUTTE OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

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Appeal from an order of the Supreme Court, Chautauqua County  
(Grace Marie Hanlon, J.), entered May 11, 2022. The order denied  
plaintiff's motion for summary judgment.

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

Memorandum: In this action between neighbors on Chautauqua Lake,  
plaintiff appeals from an order that, inter alia, denied his motion  
for summary judgment with respect to his first cause of action insofar  
as it alleges that defendants violated a riparian easement by storing  
their dock and boat lifts on the parties' right-of-way during the  
offseason. We affirm.

Viewing the evidence in the light most favorable to defendants as  
the nonmoving parties (*see Masheh v JHF Mgt., LLC*, 200 AD3d 1621, 1622  
[4th Dept 2021]; *Jackson v Rumpf*, 177 AD3d 1354, 1355 [4th Dept  
2019]), we conclude that plaintiff failed to meet his initial burden  
on the motion of establishing as a matter of law that defendants'  
offseason storage of the dock and boat lifts violated the parties'  
riparian easement or was otherwise unlawful (*see generally Alvarez v  
Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Thus, Supreme Court  
properly denied the motion "regardless of the sufficiency of the  
opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851,  
853 [1985]). In any event, even assuming, arguendo, that plaintiff  
met his initial burden, we conclude that defendants raised a material  
issue of fact in opposition sufficient to defeat the motion (*see  
Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Entered: May 5, 2023

Ann Dillon Flynn  
Clerk of the Court