

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

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CA 23-00235

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND DELCONTE, JJ.

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ROBERT WINTERMUTE, PLAINTIFF-RESPONDENT,

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ORDER

PALONE ENTERPRISES, LLC, DEFENDANT-APPELLANT,  
ET AL., DEFENDANTS.

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BARCLAY DAMON LLP, ROCHESTER (DAVID M. FULVIO OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

LAW OFFICES OF KENNETH HILLER, PLLC, AMHERST (TIMOTHY E. HILLER OF  
COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Seneca County (Barry L. Porsch, A.J.), entered August 17, 2022. The order, insofar as appealed from, denied that part of the motion of defendants seeking summary judgment dismissing the complaint against defendant Palone Enterprises, LLC.

Now, upon reading and filing the stipulation of discontinuance signed by the attorneys for the parties on September 26 and November 13, 2023,

It is hereby ORDERED that said appeal is unanimously dismissed without costs upon stipulation.

Entered: February 2, 2024

Ann Dillon Flynn  
Clerk of the Court