

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

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CA 21-00874

PRESENT: SMITH, J.P., PERADOTTO, CURRAN, BANNISTER, AND MONTOUR, JJ.

CHRISTOPHER SMITH AND MICHAEL SMITH, AS TRUSTEES
OF THE JAY AND PATRICIA SMITH IRREVOCABLE TRUST,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

THEODORE P. SMITH INCOME ONLY IRREVOCABLE TRUST,
DEFENDANT-APPELLANT.

LAW OFFICES OF ANNA SMITH, HERKIMER (ANNA J. SMITH OF COUNSEL), FOR
DEFENDANT-APPELLANT.

BOND, SCHOENECK & KING, PLLC, SYRACUSE (KEVIN G. COPE OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Herkimer County (John H. Crandall, A.J.), entered May 11, 2021. The order, among other things, granted a temporary restraining order.

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

Memorandum: Defendant appeals from an order insofar as it granted plaintiffs' request for a temporary restraining order prohibiting defendant from conducting mining operations of any kind during the pendency of the proceedings. We conclude that the appeal must be dismissed inasmuch as that order was modified by a subsequent temporary restraining order (*see Matter of Eric D.* [appeal No. 1], 162 AD2d 1051, 1051 [4th Dept 1990]).

Entered: June 30, 2023

Ann Dillon Flynn
Clerk of the Court