

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

856

CA 19-02291

PRESENT: WHALEN, P.J., SMITH, CURRAN, TROUTMAN, AND DEJOSEPH, JJ.

UP STATE TOWER CO., L.L.C., AND BUFFALO-LAKE
ERIE WIRELESS SYSTEMS CO., L.L.C., DOING BUSINESS
AS BLUE WIRELESS, PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

TOWN OF CHEEKTOWAGA, DEFENDANT-RESPONDENT.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, BUFFALO (ANNE K. BOWLING OF
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

HODGSON RUSS LLP, BUFFALO (CHARLES W. MALCOMB OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order and judgment (one paper) of the Supreme Court, Erie County (Deborah A. Chimes, J.), entered November 18, 2019. The order and judgment granted the motion of defendant to dismiss the complaint and dismissed the complaint.

It is hereby ORDERED that the order and judgment so appealed from is unanimously modified on the law by reinstating the complaint to the extent that it seeks declarations in the fourth and sixth causes of action and granting judgment in favor of defendant as follows:

It is ADJUDGED and DECLARED that there is no agreement
between the parties,

and as modified the order and judgment is affirmed without costs.

Memorandum: We agree with Supreme Court that plaintiffs are not entitled to the relief sought in the complaint. We note, however, that the court erred in dismissing the complaint to the extent that it seeks declarations in the fourth and sixth causes of action and in failing to declare the rights of the parties (*see Maurizzio v Lumbermens Mut. Cas. Co.*, 73 NY2d 951, 954 [1989]; *Ives Hill Country Club, Inc. v City of Watertown*, 185 AD3d 1494, 1496-1497 [4th Dept 2020]; *Ames v County of Monroe*, 162 AD3d 1724, 1725 [4th Dept 2018]). We therefore modify the order and judgment accordingly.

Entered: November 13, 2020

Mark W. Bennett
Clerk of the Court