

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

331

CA 17-01818

PRESENT: CENTRA, J.P., CARNI, NEMOYER, CURRAN, AND WINSLOW, JJ.

IN THE MATTER OF ASSOCIATED GENERAL CONTRACTORS
OF NYS, LLC, BARRETT PAVING MATERIALS, INC.,
BOTHAR CONSTRUCTION, LLC, CCI COMPANIES, INC.,
COLD SPRING CONSTRUCTION CO., HANSON AGGREGATES,
NEW YORK, LLC, SLATE HILL CONSTRUCTORS, INC.,
TIOGA CONSTRUCTION CO., INC., AND VECTOR
CONSTRUCTION CORP.,
PETITIONERS-PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

NEW YORK STATE THRUWAY AUTHORITY, JOANNE M.
MAHONEY, IN HER OFFICIAL CAPACITY AS CHAIR OF
NEW YORK STATE THRUWAY AUTHORITY BOARD OF
DIRECTORS, AND BILL FINCH, IN HIS OFFICIAL
CAPACITY AS ACTING EXECUTIVE DIRECTOR OF NEW
YORK STATE THRUWAY AUTHORITY,
RESPONDENTS-DEFENDANTS-RESPONDENTS.

COUCH WHITE, LLP, ALBANY (JENNIFER K. HARVEY OF COUNSEL), FOR
PETITIONERS-PLAINTIFFS-APPELLANTS.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (ALLYSON B. LEVINE OF
COUNSEL), FOR RESPONDENTS-DEFENDANTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court,
Onondaga County (Gregory R. Gilbert, J.), entered May 15, 2017 in a
hybrid CPLR article 78 proceeding and declaratory judgment action.
The judgment, insofar as appealed from, sua sponte dismissed the
petition/complaint.

It is hereby ORDERED that the judgment insofar as appealed from
is unanimously reversed in the exercise of discretion without costs
and the petition/complaint is reinstated.

Memorandum: In this hybrid CPLR article 78 proceeding and
declaratory judgment action, petitioners-plaintiffs (petitioners)
appeal from a judgment in which Supreme Court, inter alia, sua sponte
dismissed the petition/complaint (petition). We agree with
petitioners that the court improvidently exercised its discretion in
sua sponte dismissing the petition. "[U]se of the [sua sponte] power
of dismissal must be restricted to the most extraordinary
circumstances" (*Matter of Sheive v Holley Volunteer Fire Co.*, 145 AD3d
1584, 1584 [4th Dept 2016] [internal quotation marks omitted]). No

such extraordinary circumstances are present in this case. Contrary to the court's determination, "a party's lack of standing does not constitute a jurisdictional defect and does not warrant sua sponte dismissal of a complaint" (*HSBC Bank USA, N.A. v Taher*, 104 AD3d 815, 817 [2d Dept 2013]; see *U.S. Bank N.A. v Emmanuel*, 83 AD3d 1047, 1048-1049 [2d Dept 2011]). We therefore reverse the judgment insofar as appealed from in the exercise of discretion and reinstate the petition (see generally *Webb v Zogaria*, 295 AD2d 924, 924 [4th Dept 2002]).

Entered: March 23, 2018

Mark W. Bennett
Clerk of the Court