

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

988

CA 19-02053

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

CHRISTOPHER J. JULIANO AND THOMAS R. JULIANO,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

GENESEE GATEWAY, LLC, DEFENDANT-APPELLANT.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP, BUFFALO (PATRICIA GILLEN OF
COUNSEL), FOR DEFENDANT-APPELLANT.

Appeal from an order of the Supreme Court, Erie County (John F. O'Donnell, J.), entered November 6, 2019. The order, among other things, granted plaintiffs a temporary easement and a temporary restraining order against defendant.

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

Memorandum: Defendant appeals from an ex parte order granting plaintiffs a temporary easement over defendant's property along with a temporary restraining order prohibiting defendant from blocking the back door of plaintiffs' building. We conclude that "[i]nasmuch as no appeal lies as of right 'from an ex parte order, including an order entered sua sponte' . . . , and permission to appeal has not been granted (see CPLR 5701 [c]), the appeal must be dismissed" (*Obot v Medaille Coll.*, 82 AD3d 1629, 1630 [4th Dept 2011], *appeal dismissed* 17 NY3d 756 [2011], quoting *Sholes v Meagher*, 100 NY2d 333, 335 [2003]; see CPLR 5701 [a] [2]). We decline to treat the notice of appeal as an application pursuant to CPLR 5704 (a) (*cf. Matter of Shaw v Goodman*, 291 AD2d 207, 207 [1st Dept 2002]; *Matter of Tepper v Lonschein*, 253 AD2d 435, 436 [2d Dept 1998]; *Anostario v Anostario*, 249 AD2d 612, 613 [3d Dept 1998]) inasmuch as Supreme Court has stayed enforcement of the order in question and the issues raised herein do not involve "questions of law, i.e., the interpretation of [a statute] and the propriety of the . . . [c]ourt's issuance of the ex parte order" (*Anostario*, 249 AD2d at 613).

Entered: November 13, 2020

Mark W. Bennett
Clerk of the Court