

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

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CA 22-00603

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

JEANNIE-MARIE MCGUIRE, INDIVIDUALLY AND SUING IN THE RIGHT OF MCGUIRE DEVELOPMENT COMPANY, LLC, MCG REAL ESTATE HOLDINGS, LLC, MCGUIRE ACQUISITIONS LLC, MCGUIRE CAPITAL, LLC, AND SHAMROCK SEVEN ACP, LLC;

KATHLEEN MCGUIRE, INDIVIDUALLY AND SUING IN THE RIGHT OF MCGUIRE DEVELOPMENT COMPANY, LLC, DELAWARE AVENUE INVESTORS, LLC, GENESEE STREET INVESTORS, LLC, MCG REAL ESTATE HOLDINGS, LLC, MCGUIRE ACQUISITIONS LLC, MCGUIRE CAPITAL, LLC, AND SHAMROCK SEVEN ACP, LLC; AND

MICHAEL MCGUIRE, INDIVIDUALLY AND SUING IN THE RIGHT OF MCGUIRE DEVELOPMENT COMPANY, LLC, DELAWARE AVENUE INVESTORS, LLC, GENESEE STREET INVESTORS, LLC, MCG REAL ESTATE HOLDINGS, LLC, MCGUIRE ACQUISITIONS LLC, MCGUIRE CAPITAL, LLC, AND SHAMROCK SEVEN ACP, LLC,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

F. JAMES MCGUIRE, INDIVIDUALLY AND AS GENERAL MANAGER OF MCGUIRE DEVELOPMENT COMPANY, LLC, DELAWARE AVENUE INVESTORS, LLC, GENESEE STREET INVESTORS, LLC, MCG REAL ESTATE HOLDINGS, LLC, MCGUIRE ACQUISITIONS LLC, MCGUIRE CAPITAL, LLC, SHAMROCK SEVEN ACP, LLC, DEFENDANT-RESPONDENT,

MCGUIRE DEVELOPMENT COMPANY, LLC, DELAWARE AVENUE INVESTORS, LLC, GENESEE STREET INVESTORS, LLC, MCG REAL ESTATE HOLDINGS, LLC, MCGUIRE ACQUISITIONS LLC, MCGUIRE CAPITAL, LLC, MCGUIRE PV HOLDING L.P., AND SHAMROCK SEVEN ACP, LLC,
DEFENDANTS-RESPONDENTS.

UNDERBERG & KESSLER LLP, ROCHESTER (AARON M. GRIFFIN OF COUNSEL), FOR PLAINTIFFS-APPELLANTS.

HARTER SECREST & EMERY LLP, BUFFALO (JOHN G. HORN OF COUNSEL), FOR DEFENDANT-RESPONDENT F. JAMES MCGUIRE, INDIVIDUALLY AND AS GENERAL MANAGER OF MCGUIRE DEVELOPMENT COMPANY, LLC, DELAWARE AVENUE INVESTORS, LLC, GENESEE STREET INVESTORS, LLC, MCG REAL ESTATE HOLDINGS, LLC, MCGUIRE ACQUISITIONS LLC, MCGUIRE CAPITAL, LLC,

AND SHAMROCK SEVEN ACP, LLC.

WOODS OVIATT GILMAN LLP, BUFFALO (BRIAN D. GWITT OF COUNSEL), FOR DEFENDANTS-RESPONDENTS MCGUIRE DEVELOPMENT COMPANY, LLC, DELAWARE AVENUE INVESTORS, LLC, GENESEE STREET INVESTORS, LLC, MCG REAL ESTATE HOLDINGS, LLC, MCGUIRE ACQUISITIONS LLC, MCGUIRE CAPITAL, LLC, MCGUIRE PV HOLDING L.P., AND SHAMROCK SEVEN ACP, LLC.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered March 11, 2022. The order, inter alia, denied that part of the motion of plaintiffs seeking relief from a stipulated standstill order.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this dispute over the ownership and operation of certain family businesses, plaintiffs appeal from an order that, inter alia, denied that part of their motion seeking relief from a stipulated standstill order, pursuant to which defendants were prohibited from engaging in "any transactions and conduct outside the ordinary course of business." In particular, plaintiffs sought leave to conduct a vote to remove and replace the general manager of defendants McGuire Development Company, LLC, MCG Real Estate Holdings, LLC, and McGuire Acquisitions LLC (company defendants). Plaintiffs' sole contention on appeal is that, properly interpreted, the stipulated standstill order did not prohibit them from conducting such a vote, and thus Supreme Court erred in interpreting the stipulated standstill order as restricting their ability to act as members of the company defendants. That contention is unpreserved for appellate review inasmuch as plaintiffs failed to raise that issue before the motion court (see CPLR 5501 [a]; *Panaro v Athenex, Inc.*, 207 AD3d 1069, 1070 [4th Dept 2022]; see generally *Ciesinski v Town of Aurora*, 202 AD2d 984, 985 [4th Dept 1994]). Indeed, we note that, before the motion court, plaintiffs expressly conceded that the stipulated standstill order applied to them, and thus they merely sought relief from that order in the form of leave to conduct the aforementioned vote. We therefore affirm.

Entered: March 17, 2023

Ann Dillon Flynn
Clerk of the Court