

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

1309

CA 09-00953

PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, AND GORSKI, JJ.

IN THE MATTER OF PASTOR KEITH H. SCOTT, SR.,
ET AL., PETITIONERS,
DORA RICHARDSON, JOSEPHINE RUSH, JOHN MCKENDRY,
AND SHELLEY MCKENDRY, PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

CITY OF BUFFALO, COMMON COUNCIL OF CITY OF
BUFFALO, BYRON BROWN, IN HIS OFFICIAL CAPACITY
AS MAYOR OF CITY OF BUFFALO, CITY OF BUFFALO
DEPARTMENT OF PUBLIC WORKS, DEPARTMENT OF ECONOMIC
DEVELOPMENT PERMITS AND INSPECTION, BUFFALO SEWER
AUTHORITY AND BUFFALO MUNICIPAL WATER FINANCE
AUTHORITY, RESPONDENTS-RESPONDENTS.

THE KNOER GROUP, PLLC, BUFFALO (ROBERT E. KNOER OF COUNSEL), FOR
PETITIONERS-APPELLANTS.

PHILLIPS LYTLE LLP, BUFFALO (ADAM S. WALTERS OF COUNSEL), FOR
RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (Joseph G. Makowski, J.), entered July 7, 2008 in a CPLR
article 78 proceeding. The judgment dismissed the second amended
petition.

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

Memorandum: We affirm for reasons stated in the decision at
Supreme Court (*Scott v City of Buffalo*, 20 Misc 3d 1135[A], 2008 NY
Slip Op 51738[U]). We write only to note that the contentions of
petitioners concerning Executive Law § 12 and the constitutionality of
a transfer of property between respondent City of Buffalo and the
Seneca Nation of Indians are raised for the first time on appeal, and
we therefore do not consider them (see *Ciesinski v Town of Aurora*, 202
AD2d 984, 985). We further note that, on a prior appeal before this
Court, petitioners raised the issue now raised concerning the number
of votes necessary to approve the transfer of property by respondent
Common Council of the City of Buffalo, and we previously decided that
issue (*Matter of Scott v City of Buffalo*, 38 AD3d 1287). Our
reconsideration of that issue on this appeal is thus foreclosed (see
Mobil Oil Corp. v City of Syracuse Indus. Dev. Agency, 224 AD2d 15,

19, *appeal dismissed* 89 NY2d 860, *lv denied* 89 NY2d 811).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court