

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

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CA 13-01990

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND WHALEN, JJ.

IN THE MATTER OF BUFFALO NIAGARA BUSINESS
PARK, LLC, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

BOARD OF ASSESSMENT REVIEW FOR CITY OF BUFFALO,
ASSESSOR OF CITY OF BUFFALO, CITY OF BUFFALO,
RESPONDENTS-RESPONDENTS,
AND COUNTY OF ERIE, INTERVENOR-RESPONDENT.

ZDARSKY, SAWICKI & AGOSTINELLI LLP, BUFFALO (GERALD T. WALSH OF
COUNSEL), FOR PETITIONER-APPELLANT.

TIMOTHY A. BALL, CORPORATION COUNSEL, BUFFALO (CAVETTE A. CHAMBERS OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

MOSEY PERSICO LLP, BUFFALO (MARGARET A. HURLEY OF COUNSEL), FOR
INTERVENOR-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered August 20, 2013 in a proceeding pursuant to RPTL article 7. The order granted the motions of respondents and intervenor to dismiss.

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

Memorandum: Petitioner appeals from an order that, inter alia, granted the motions of respondents and intervenor to dismiss the petition in this tax certiorari proceeding pursuant to the Real Property Tax Law article 7. On appeal, petitioner contends that Supreme Court erred in granting the motions because the petition was timely filed and service was proper. We reject that contention. It is undisputed that petitioner never served the original petition on any party herein and, pursuant to RPTL 702 (3), the failure to file and serve the petition "shall constitute a complete defense to the petition and the petition must be dismissed." In view of our decision, we need not address petitioner's remaining contentions.

Entered: June 13, 2014

Frances E. Cafarell
Clerk of the Court