

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

557

CA 10-01745

PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, AND GREEN, JJ.

ALTSHULER SHAHAM PROVIDENT FUNDS, LTD.,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

GML TOWER LLC, ET AL., DEFENDANTS,
THE PIKE COMPANY, INC., THE HAYNER HOYT
CORPORATION AND SYRACUSE MERIT ELECTRIC,
A DIVISION OF O'CONNELL ELECTRIC CO., INC.,
DEFENDANTS-RESPONDENTS.

HANCOCK & ESTABROOK, SYRACUSE, AND TROUTMAN SANDERS, LLP, NEW YORK
CITY, D'AGOSTINO, LEVINE, LANDESMAN & LEDERMAN, LLP, SPECIAL APPELLATE
COUNSEL, NEW YORK CITY (BRUCE H. LEDERMAN OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

GILBERTI STINZIANO HEINTZ & SMITH PC, SYRACUSE, HAHN LOESER & PARKS
LLP, CLEVELAND, OHIO (TIMOTHY M. BITTEL, OF THE OHIO AND FLORIDA BARS,
ADMITTED PRO HAC VICE, OF COUNSEL), FOR DEFENDANT-RESPONDENT THE
HAYNER HOYT CORPORATION.

PHILLIPS LYTLE LLP, ROCHESTER (MARK J. MORETTI OF COUNSEL), FOR
DEFENDANT-RESPONDENT THE PIKE COMPANY, INC.

BYRNE, COSTELLO & PICKARD, P.C., SYRACUSE (JORDAN R. PAVLUS OF
COUNSEL), FOR DEFENDANT-RESPONDENT SYRACUSE MERIT ELECTRIC, A DIVISION
OF O'CONNELL ELECTRIC CO., INC.

Appeal from an order of the Supreme Court, Onondaga County
(Deborah H. Karalunas, J.), entered May 20, 2010. The order granted
the motions of defendants The Pike Company, Inc., The Hayner Hoyt
Corporation and Syracuse Merit Electric, a Division of O'Connell
Electric Co., Inc., for summary judgment.

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

Memorandum: We affirm for reasons stated in the decision at
Supreme Court (*Altshuler Shaham Provident Funds, Ltd. v GML Tower,
LLC*, 28 Misc 3d 475). We add only that we do not address plaintiff's
contention that the 2007 Loan Agreement was a preliminary agreement
that expired before the mortgage at issue was filed. That contention
is raised for the first time on appeal and " 'could have been obviated

or cured by factual showings or legal countersteps' " in Supreme Court
(*Oram v Capone*, 206 AD2d 839, 840).

Entered: April 29, 2011

Patricia L. Morgan
Clerk of the Court