

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

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CA 19-02362

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

MOMENTUM AUTOMOTIVE MANAGEMENT, LLC,
MOMENTUM AUTO GROUP, INC., RAHIM HASSANALLY,
PETITIONERS-APPELLANTS,
ET AL., PETITIONERS,

V

MEMORANDUM AND ORDER

RADIUM2 CAPITAL, INC., RESPONDENT-RESPONDENT.

LIPPES MATHIAS WEXLER FRIEDMAN LLP, BUFFALO (THOMAS J. GAFFNEY OF COUNSEL), FOR PETITIONERS-APPELLANTS.

STEIN ADLER DABAH & ZELKOWITZ LLP, NEW YORK CITY (CHRISTOPHER R. MURRAY OF COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John F. O'Donnell, J.), entered November 25, 2019. The order dismissed the petition.

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

Memorandum: Petitioners-appellants (petitioners) appeal from an order that, inter alia, dismissed their petition without prejudice based on the doctrine of forum non conveniens. On appeal, petitioners contend that Supreme Court erred in sua sponte dismissing the petition based on forum non conveniens. We conclude that the appeal must be dismissed. " 'It is incumbent upon an appellant to assemble a proper record, including the relevant documents that were before the lower court, and appeals will be dismissed when the record is incomplete' " (*Christa Constr., LLC v Vanguard Light Gauge Steel Bldgs.* [appeal No. 3], 181 AD3d 1310, 1310 [4th Dept 2020]; see *Mergl v Mergl*, 19 AD3d 1146, 1147 [4th Dept 2005]). Inasmuch as petitioners failed to meet their responsibility as the appellants to assemble an adequate record on appeal, we cannot review the propriety of the court's order dismissing the petition (see generally *Matter of Unczur v Welch*, 159 AD3d 1405, 1405 [4th Dept 2018], lv denied 31 NY3d 909 [2018]; *Matter of Christopher D.S. [Richard E.S.]*, 136 AD3d 1285, 1286-1287 [4th Dept 2016]).

Entered: June 11, 2021

Mark W. Bennett
Clerk of the Court