

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

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CA 20-00763

PRESENT: PERADOTTO, J.P., LINDLEY, WINSLOW, AND BANNISTER, JJ.

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LANCASTER MANOR LLC AND LANCASTER MANOR  
REALTY, LLC, PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

COMPREHENSIVE AT LANCASTER, LLC, DOING BUSINESS  
AS SYMPHONY MANOR AT LANCASTER, BROADWAY  
LANCASTER REALTY, LLC, DEFENDANTS-APPELLANTS,  
ET AL., DEFENDANT.

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COMPREHENSIVE AT LANCASTER, LLC, DOING BUSINESS  
AS SYMPHONY MANOR AT LANCASTER, AND BROADWAY  
LANCASTER REALTY, LLC, THIRD-PARTY  
PLAINTIFFS-APPELLANTS,

V

NEIL ZYSKIND, MARY AGNES MANOR, LLC, MARY AGNES  
MANOR MANAGEMENT, LLC, MARY AGNES MANOR  
REALTY, LLC, LANCASTER MANOR LLC, LANCASTER  
MANOR REALTY, LLC, THIRD-PARTY  
DEFENDANTS-RESPONDENTS,  
ET AL., THIRD-PARTY DEFENDANTS.

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SCHLOSS & SCHLOSS, AIRMONT (JONATHAN B. SCHLOSS OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS AND THIRD-PARTY PLAINTIFFS-APPELLANTS.

LAZARUS & LAZARUS, P.C., NEW YORK CITY (YVETTE J. SUTTON OF COUNSEL),  
FOR PLAINTIFFS-RESPONDENTS AND THIRD-PARTY DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Erie County (Emilio L. Colaiacovo, J.), entered May 14, 2020. The order, among other things, granted in part the motion of third-party defendants-respondents to dismiss the third-party complaint as against them.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by denying that part of the motion with respect to the fourth cause of action and reinstating that cause of action, and as modified the order is affirmed without costs.

Memorandum: In this dispute arising from operation and purchase agreements involving an adult care facility, defendants-third-party plaintiffs Comprehensive at Lancaster, LLC, doing business as Symphony Manor at Lancaster, and Broadway Lancaster Realty, LLC (collectively,

Comprehensive plaintiffs) appeal from an order that, inter alia, granted in part the motion of third-party defendants-respondents to dismiss the third-party complaint pursuant to CPLR 3211 (a) (7). Preliminarily, although plaintiffs-third-party defendants Lancaster Manor LLC and Lancaster Manor Realty, LLC filed a notice of cross appeal, they do not raise any contentions related thereto, and we therefore deem the cross appeal abandoned and dismissed (see 22 NYCRR 1250.10 [a]; *Brown v State of New York* [appeal No. 2], 144 AD3d 1535, 1537 [4th Dept 2016], *affd* 31 NY3d 514 [2018]). As the Comprehensive plaintiffs contend on their appeal and third-party defendants-respondents correctly concede, Supreme Court erred in granting that part of the motion seeking to dismiss the fourth cause of action for attorneys' fees (see generally *Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012]; *Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491 [1989]). We therefore modify the order accordingly. We have considered the Comprehensive plaintiffs' remaining contentions and conclude that none warrants reversal or further modification of the order.

Entered: February 4, 2022

Ann Dillon Flynn  
Clerk of the Court