

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

619

CA 20-01471

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, CURRAN, AND DEJOSEPH, JJ.

CAROL L. JONES, INDIVIDUALLY AND AS EXECUTOR
OF THE ESTATE OF DONALD J. JONES, DECEASED,
JONES-CARROLL, INC., AND SEALAND WASTE LLC,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

TOWN OF CARROLL AND TOWN BOARD OF TOWN OF
CARROLL, DEFENDANTS-APPELLANTS.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (LYLE T. HAJDU OF COUNSEL),
FOR DEFENDANTS-APPELLANTS.

BRAUTIGAM & BRAUTIGAM, LLP, FREDONIA (DARYL P. BRAUTIGAM OF COUNSEL),
FOR PLAINTIFFS-RESPONDENTS CAROL L. JONES, INDIVIDUALLY AND AS
EXECUTOR OF THE ESTATE OF DONALD J. JONES, DECEASED, AND
JONES-CARROLL, INC.

KNAUF SHAW LLP, ROCHESTER (ALAN J. KNAUF OF COUNSEL), FOR
PLAINTIFF-RESPONDENT SEALAND WASTE LLC.

Appeal from an order of the Supreme Court, Chautauqua County
(James H. Dillon, J.), entered June 23, 2020. The order, among other
things, denied the cross motion of defendants for summary judgment.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed with costs.

Memorandum: The facts and procedural history of this case are
set forth in our decisions on the prior appeals (*Jones v Town of
Carroll*, 32 AD3d 1216 [4th Dept 2006], *lv dismissed* 12 NY3d 880
[2009]; *Jones v Town of Carroll* [appeal No. 1], 57 AD3d 1376 [4th Dept
2008], *revd* 15 NY3d 139 [2010], *rearg denied* 15 NY3d 820 [2010]
[*Jones I*]; *Jones v Town of Carroll* [appeal No. 2], 57 AD3d 1379 [4th
Dept 2008] [*Jones II*]; *Jones v Town of Carroll*, 122 AD3d 1234 [4th
Dept 2014], *lv denied* 25 NY3d 910 [2015] [*Jones III*]; *Jones v Town of
Carroll*, 158 AD3d 1325 [4th Dept 2018], *lv dismissed* 31 NY3d 1064
[2018] [*Jones IV*]; *Jones v Town of Carroll*, 177 AD3d 1297 [4th Dept
2019] [*Jones V*]). Here, defendants appeal from an order that, among
other things, denied their cross motion for summary judgment seeking
dismissal of certain causes of action.

Supreme Court denied defendants' cross motion upon determining,
inter alia, that the cross motion was untimely and an improper

successive motion for summary judgment. Defendants do not challenge those determinations by the court and thus, having failed to present any argument with respect to those dispositive determinations, defendants are deemed to have abandoned any contentions with respect to the propriety thereof (see *Becker-Manning, Inc. v Common Council of City of Utica*, 114 AD3d 1143, 1143-1144 [4th Dept 2014]; see generally *Ciesinski v Town of Aurora*, 202 AD2d 984, 984 [4th Dept 1994]). Even assuming, arguendo, that defendants have not abandoned on appeal any challenge to those determinations, we conclude that the court properly denied defendants' cross motion for summary judgment as untimely under CPLR 3212 (a) (see *Lozzi v Fuller Rd. Mgt. Corp.*, 175 AD3d 1815, 1816 [4th Dept 2019]; *Mitchell v City of Geneva*, 158 AD3d 1169, 1169 [4th Dept 2018]; see generally *Brill v City of New York*, 2 NY3d 648, 650-654 [2004]) and as an improper successive motion for summary judgment (see *Magic Circle Films Intl., LLC v Breon*, 192 AD3d 1610, 1611-1612 [4th Dept 2021]; *Vinar v Litman*, 110 AD3d 867, 868-869 [2d Dept 2013]). Inasmuch as defendants presented no argument with respect to the court's dispositive determinations, we affirm with costs (see *Becker-Manning, Inc.*, 114 AD3d at 1144).

Entered: August 26, 2021

Mark W. Bennett
Clerk of the Court