

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32335
H/prt

_____AD3d_____

Argued - September 9, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2010-05417

DECISION & ORDER

One Monroe, LLC, appellant, v City of New York,
et al., defendants/respondents-respondents, et al.,
defendants/respondents.

(Index No. 12755/09)

Erez Glambosky, New York, N.Y. (Olga Someras of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers,
Michelle Goldberg-Cahn, and Alan G. Krams of counsel), for
defendants/respondents-respondents.

In a hybrid action, inter alia, to recover damages for injury to property, and proceeding pursuant to CPLR article 78, inter alia, to review a determination of the New York City Department of Buildings to demolish a building on the subject property, the plaintiff/petitioner appeals from an order of the Supreme Court, Kings County (R. Miller, J.), dated April 1, 2010, which granted the motion of the defendants/respondents City of New York, the New York City Department of Buildings, Robert LiMandri, Bryan Winter, the New York City Landmarks Preservation Commission, Robert B. Tierney, the Department of Housing Preservation and Development of the City of New York, and Rafael E. Cestero to dismiss the complaint/petition insofar as asserted against them pursuant to CPLR 3211.

ORDERED that on the Court's own motion, the notice of appeal from so much of the order as granted that branch of the motion of the defendants/respondents City of New York, the New York City Department of Buildings, Robert LiMandri, Bryan Winter, the New York City Landmarks Preservation Commission, Robert B. Tierney, the Department of Housing Preservation and Development of the City of New York, and Rafael E. Cestero which was to dismiss the petition insofar as asserted against them pursuant to CPLR 3211 is deemed to be an application for leave to appeal from that portion of the order, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

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ORDERED that the order is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

On May 24, 2008, in response to a complaint, an inspector from the New York City Department of Buildings (hereinafter the DOB) inspected a building owned by the plaintiff/petitioner (hereinafter the plaintiff). Upon inspection, the DOB issued a 24-hour order to vacate the premises to all tenants/occupants of the building, and the City of New York commenced demolition of the building. The plaintiff subsequently commenced this hybrid action, inter alia, to recover damages for injury to property, and proceeding pursuant to CPLR article 78, inter alia, to review the determination of the DOB to demolish the building. The City, the DOB, Robert LiMandri, as Commissioner of the DOB, Bryan Winter, as Brooklyn Deputy Borough Commissioner of the DOB, the New York City Landmarks Preservation Commission (hereinafter the LPC), Robert B. Tierney, as Chair/Commissioner of the LPC, the Department of Housing Preservation and Development of the City of New York (hereinafter the DHPD), and Rafael E. Cestero, as Commissioner of the DHPD (hereinafter collectively the City defendants) moved to dismiss the complaint/petition insofar as asserted against them pursuant to CPLR 3211. The Supreme Court granted the motion. We affirm.

Initially, contrary to the plaintiff's contention, although the City defendants' motion was made pursuant to CPLR 3211, the parties made it "unequivocally clear" that they were 'laying bare their proof' and 'deliberately charting a summary judgment course'" by submitting extensive documentary evidence, factual affidavits, and expert affidavits in support of their respective positions (*Sokol v Leader*, 74 AD3d 1180, 1183, quoting *Four Seasons Hotels v Vinnik* 127 AD2d 310, 320; see *Hopper v McCollum*, 65 AD3d 669, 670; *Hamlet at Willow Cr. Dev. Co., LLC v Northeast Land Dev. Corp.*, 64 AD3d 85, 99; *Harris v Hallberg*, 36 AD3d 857, 858). Thus, application of a summary judgment standard is appropriate (see *Hopper v McCollum*, 65 AD3d at 670; *Harris v Hallberg*, 36 AD3d at 858).

"In the exercise of its police powers [a] municipality may demolish a building without providing notice and an opportunity to be heard if there are exigent circumstances which require immediate demolition of the building to protect the public from imminent danger" (*Rapps v City of New York*, 54 AD3d 923, 923 [internal quotation marks omitted]). Here, the City defendants submitted evidence establishing, prima facie, the existence of such exigent circumstances (see *Merino v City of Middletown*, 272 AD2d 454, 454-455; *Marigin v City of New York*, 215 AD2d 539, 539-540; *Starik v City of New York*, 68 AD2d 936). The evidence submitted by the plaintiff in opposition failed to raise a triable issue of fact with respect to the condition of the premises at the time the demolition was commenced (see *Zuckerman v City of New York*, 49 NY2d 557, 562).

The plaintiff's remaining contentions are without merit.

MASTRO, J.P., BALKIN, CHAMBERS and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court