

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

571

CA 13-01917

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

---

IN THE MATTER OF JACK BAILEY, ET AL.,  
PETITIONERS-PLAINTIFFS,  
AND ANDREW DEWOLF,  
PETITIONER-PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

VILLAGE OF LYONS BOARD OF TRUSTEES,  
RESPONDENT-DEFENDANT-RESPONDENT.

---

ANDREW DEWOLF, PETITIONER-PLAINTIFF-APPELLANT PRO SE.

NESBITT & WILLIAMS, NEWARK (ARTHUR B. WILLIAMS OF COUNSEL), FOR  
RESPONDENT-DEFENDANT-RESPONDENT.

---

Appeal from a judgment (denominated decision) of the Supreme Court, Wayne County (John B. Nesbitt, A.J.), entered August 27, 2013 in a CPLR article 78 proceeding and declaratory judgment action. The judgment, among other things, granted the petition-complaint in part by enjoining respondent-defendant to have a Board of Trustee's approved dissolution plan in place by October 20, 2013, failing which the court would appoint a hearing officer to undertake that responsibility.

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

Memorandum: We dismiss the appeal as moot because, once the dissolution plan at issue was adopted on September 30, 2013, no justiciable controversy remained upon which a declaratory judgment could be made or injunctive relief could be granted. "It is a fundamental principle of our jurisprudence that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal" (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 713). This case does not fall within the exception to the mootness doctrine (*see id.* at 714-715).

Entered: May 9, 2014

Frances E. Cafarell  
Clerk of the Court