

328 Owners Corp. v 330 West 86 Oaks Corp.

2002 NY Slip Op 30056(U)

April 5, 2002

Supreme Court, New York County

Docket Number:

Judge: Barbara Kapnick

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. **BARBARA R. KAPNICK** PART 12
Justice

328 Owners Corp

INDEX NO. 604570/00

- v -

330 West 86 Oaks Corp, 330 West 86th St, LLC and City

MOTION DATE _____

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

SCANNED
APR 12 2002

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION / CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ J.S.C. DATED: _____

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

Dated: 4/5/02



J.S.C.
 NON-FINAL DISPOSITION
BARBARA R. KAPNICK
J.S.C.

Check one: FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IA PART 12

-----X
328 OWNERS CORP.,

Plaintiff,

- against -

330 WEST 86 OAKS CORP., 330 WEST 86TH
STREET, LLC AND THE CITY OF NEW YORK

Defendants.
-----X

DECISION/ORDER

Index No. 604570/00
Motion Seq. Nos.
003 and 004

BARBARA R. KAPNICK, J. :

Motion sequence numbers 003 and 004 are consolidated for disposition.

Plaintiff 328 Owners Corp., a cooperative corporation, is the owner of the apartment building located at 328 West 86th Street, New York, New York, which shares a party wall with the adjoining property, a five-story townhouse located at 330 West 86th Street, which was sold on or about June 22, 1999 by defendant City of New York pursuant to a City Council Resolution, to defendant 330 west 86 Oaks Corp. ("Oaks Corp.") for a purchase price of \$340,000.00.

The property was subsequently sold by Oaks Corp. on or about February 13, 2001 to defendant 330 West 86th Street, LLC ("the new owner")

Plaintiff's amended complaint seeks a judgment:

i. declaring that the property located at 330 West 86th Street may not be used other than for rehabilitation or conservation of the existing building or construction of one to four unit dwellings without any change in land use (first cause of action);

ii. enjoining Oaks Corp., the new owner and any successors or assigns from using the property other than for rehabilitation or conservation of the existing building or construction of one to four unit dwellings without any change in land use (second cause of action); and

iii. declaring the conveyance of the property to Oaks Corp. and, thereafter, to the new owner, to be null and void and without force or effect, on the ground that said transfers violated the gift and loan prohibitions of Article 16 of the General Municipal Law and Article VIII of the New York State Constitution because the City failed to issue a request for offers ("RFO"), conduct competitive bidding or otherwise seek to obtain the fair market value for the property, investigate the qualifications and plans of Oaks Corp. or take any steps to assure that the purpose for the sale and the designation of Oaks Corp. as the purchaser was fulfilled (third cause of action).

Plaintiff filed a notice of pendency based on its third cause of action on October 23, 2000.

Defendants Oaks Corp. and 330 West 86th Street now move (under motion sequence number 003) for an order:

(1) dismissing the third cause of action on the grounds that plaintiff's claims are time-barred under the 4-month limitation period set forth in CPLR § 217; plaintiff lacks standing to challenge the conveyance; and the conveyance in any event did not violate the General Municipal Law or the New York State Constitution,

(2) directing the New York County Clerk to cancel the notice of pendency filed herein by plaintiff pursuant to CPLR § 6514; or alternatively,

(3) directing cancellation of the notice of pendency unless plaintiff provides an undertaking in an amount to be fixed by the Court pursuant to CPLR § 6515.

Defendant City of New York moves (under motion sequence number 004) for an order:

(1) converting the third cause of action in this lawsuit into a special proceeding pursuant to Article 78 of the CPLR; and having converted that cause of action,

(2) dismissing the third cause of action on the grounds that plaintiff lacks standing to sue, the claim is time-barred, and the claim fails to state a cause of action.

Plaintiff cross-moves for an order:

(1) denying both motions to dismiss the third cause of action; and

(2) granting plaintiff summary judgment on the first and second causes of action or, in the alternative, granting plaintiff summary judgment on its third cause of action.

Plaintiff contends that the third cause of action was properly brought in the context of a declaratory judgment action rather than an Article 78 proceeding since plaintiff is challenging a 'legislative' act - i.e., a City council resolution permitting the City to sell the property without public auction or sealed bid (see, General Municipal Law § 695(2)(b)) - and not an 'administrative' act.

Defendants Oaks Corp. and the new owner, however, argue that the City Council's resolution was, in fact, an 'administrative' act subject to review only through an Article 78 proceeding. See, e.g., Falbros Realty v. Michetti, 200 A.D.2d 85 (1st Dep't 1994).

It is well settled that an action, or a determination, is deemed to be administrative where it "is characterized by its individualized application, limited duration, and informal adoption, e.g., resolution by the governing body." International Paper Co. v. Sterling Forest Pollution Control Corp., 105 A.D.2d 278, 282 (2nd Dep't 1984). See also, Town of Webster v. Village of

Webster, 280 A.D.2d 931 (4th Dep't 2001); Bennet Road Sewer Co. v. Town Board of Town of Camillus, 243 A.D.2d 61 (4th Dep't 1998).

Based on the papers submitted and the oral argument held on the record on November 21, 2001, this Court finds that Resolution No. 673 of the City Council, which pertained solely to the subject property located at 330 West 86th Street, must be deemed an 'administrative' act. Plaintiff's third cause of action is thus governed by the 4-month limitations period applicable to Article 78 proceedings, and is time-barred.

Accordingly, the motion by defendants Oaks Corp. and 330 West 86th Street and the motion by defendant City of New York are granted to the extent of dismissing plaintiff's third cause of action with prejudice and without costs and disbursements, and vacating the notice of pendency.

Plaintiff's first and second causes of action are severed and continued.

That portion of plaintiff's cross-motion seeking summary judgment as to the first and second causes of action is denied as premature.

All parties shall appear for a preliminary conference in IA
Part 12, 80 Centre Street, Room 308 on May 1, 2002 at 9:30 a.m.

This constitutes the decision and order of this Court.

Dated: April 5, 2002



BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK