

Town of Schodack v Haas

2006 NY Slip Op 30087(U)

June 2, 2006

Supreme Court, Rensselaer County

Docket Number: 0214637/2007

Judge: George B. Ceresia

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF RENSSELAER

TOWN OF SCHODACK,

Plaintiff,

-against-

JOHN HAAS,

Defendant.

JOHN HAAS,

Plaintiff,

-against-

TOWN OF SCHODACK,

Defendant.

All Purpose Term

Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
Index No. 214637 RJI No. 41-0281-05¹

Appearances:

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¹By order dated February 3, 2006, the action "John Haas, Plaintiff -against- The Town of Schodack, Defendant", Rensselaer County Index Number 216369, RJI No. 41-0706-05 was consolidated with the action "The Town of Schodack, Plaintiff -against- John Haas, Defendant" under Rensselaer County Index Number 214637, RJI No. 41-0281-05.

DECISION/ORDER

George B. Ceresia, Jr., Justice

The Town of Schodack commenced the first action seeking injunctive relief to remove John Haas from his house on the ground that it had been condemned and determined to be unsafe and unfit for human habitation. Thereafter, John Haas commenced the second action seeking damages for his allegedly unlawful ouster from his home, for damages to the house caused by the Town's actions in boarding it up and seeking review of a determination by the Town Board of the Town of Schodack requiring the removal or demolition of the house.

Immediately upon commencement of the first action the Town moved for a preliminary injunction to enjoin Mr. Haas from residing in or entering upon the premises except for the purposes of remediation or removal as required by a notice of violation served upon Mr. Haas. Upon commencement of the second action, Mr. Haas moved for a preliminary injunction enjoining the Town from demolishing his house during the pendency of the action. The Town cross-moved in the second action for an order vacating the temporary restraining order, denying Mr. Haas' motion for a declaratory judgment, granting a permanent injunction enjoining Mr. Haas from entering or residing upon the premises and requiring demolition of the house. The motions were adjourned without date pending settlement negotiations. The Court notes that while Mr. Haas filed for bankruptcy in November, 2006, the automatic stay provided by 11 USC § 362 does

not apply to actions or proceedings such as the instant proceedings to demolish the house taken under a municipality's police power (11 USC § 362 [b] [4]).

The parties are subject to different standards for granting injunctive relief based upon their status. Mr. Haas must show a likelihood of success on the merits, irreparable injury in the absence of the injunction and a balancing of the equities in his favor (see Nobu Next Door v Fine Arts Hous., 4 NY3d 839, 840 [2005]; Matter of Kalichman, 31 AD3d 1066, 1067 [3d Dept 2006]). The Town, as a municipality, need only show a likelihood of success on the merits, a balancing of the equities in its favor and a violation of its ordinances or local laws. It need not show irreparable injury (see Town of Brookhaven v Pesinkowski, 288 AD2d 371 [2d Dept 2001]; Town of East Hampton v Buffa, 157 AD2d 714, 715 [2d Dept 1990]; Town of Esopus v Fausto Simoes and Assocs., 145 AD2d 840, 841-842 [3d Dept 1988]).

Mr. Haas has shown that the Town served a notice of violation dated April 26, 2005 which listed the violations as

“sagging floors; ceilings collapsing; foundation collapse in the rear of the structure; structure filled with junk, trash and clutter; egress blocked; improperly installed woodstove; improperly maintained and located portable heater; wall sections open to the outside; absence of smoke detectors; exposed sewer pipes and structure, yard and means of exit blocked with vehicles and parts of vehicles in violation of the Town of Schodack Zoning Code.”

Thereafter, Mr. Haas allegedly utilized all of his modest monetary resources to cure the defects. As of the time of the Town Board vote to demolish the structure, essentially all of the listed violations had been cured. An inspection in October 2005 by the engineer

retained by the Town resulted in findings of structural deficiencies of “a. No permanent moisture/weather barrier on the rear of the house; b. The rear door (second means of egress) has no permanent steps; c. Lack of a permanent heat source; and d. the plumbing continues to be incomplete.” While some of these deficiencies are related to those listed in the original notice of violation, none of them were listed in the original notice of violation. Moreover, it appears that the house is now structurally stable and in no imminent danger of collapse due to the significant repairs performed by Mr. Haas. Mr. Haas was never served with a formal notice of violation with respect to the new deficiencies nor was he ever given a reasonable opportunity to cure them. Unless a structure is in imminent danger of collapse, the municipality must provide adequate notice and an opportunity to cure the defects before it may demolish a structure (cf. St. David's Anglican Catholic Church, Inc. v Town of Halfmoon, 11 AD3d 874 [3d Dept 2004]; Matter of Town of Duanesburg v Vojnar, 147 AD2d 819 [3d Dept 1989]).

Furthermore, it appears that the notice of violation was defective in that it failed to set forth the recommended remedial action, as required by the Town of Schodack Zoning Code § 219-105 (B). In addition, the new violations are relatively minor and could be cured without risk and at considerably less expense than the value of the house or the cost of demolition (cf. Matter of Berncolors-Poughkeepsie, Inc. v City of Poughkeepsie, 96 AD2d 595, 597 [2d Dept 1983]). Mr. Haas has therefore made a showing of a likelihood of success on the merits with respect to his challenge to the determination to demolish the

house.

Mr. Haas has also shown irreparable injury if the injunctive relief is not granted. If the Town is allowed to demolish the house, he will lose the value and expense of all of the significant repairs he has made since the original notice of violation was served. Moreover, it is unlikely that the current value of the house, which would be the measure of damages for recovery against the Town, would cover the cost of reproduction. As such, Mr. Haas would be left without a house and insufficient funds to reconstruct one.

The Court also finds that a balancing of the equities lies in Mr. Haas' favor. There is no indication that the house is in imminent danger of collapse. Indeed, the fact that the motions have been adjourned for well in excess of a year indicates an absence of the need for immediate action (see Scott v Town of Duanesburg, 176 AD2d 989, 991 [3d Dept 1991]). Moreover, the latest reported conditions at the premises do not appear to be significantly different from those found at almost any house under construction. As such, the Town will not suffer any harm as a result of being prevented from demolishing the premises during the pendency of the action. The irreparable harm to Mr. Haas clearly outweighs the Town's minimal interests. It is therefore determined that Mr. Haas is entitled to a preliminary injunction enjoining and restraining the Town from demolishing the house during the pendency of this action. Based upon Mr. Haas' indigency and the absence of a likelihood of any actual damages to the Town, pursuant to CPLR 6312 (b) the Court conditions the injunction upon posting an undertaking in the amount of \$10.00.

The Town has shown that as of its last inspection, there were still a number of deficiencies in the premises which must be corrected before they are safely habitable. Moreover, it appears that it would be a violation of the Town Zoning Code for Mr. Haas to reside in the premises before such repairs are performed. It also appears that the Town is likely to succeed on the merits with respect to enjoining Mr. Haas from living in the house before it is safe to do so. Finally, a balancing of the equities on such issue lies with the Town. It is therefore determined that the Town is entitled to a preliminary injunction enjoining Mr. Haas from residing in the house unless and until all required repairs have been made to the satisfaction of the Town's building inspectors.

Under the circumstances, the Court will direct Mr. Haas to submit, within fifteen (15) days, an affidavit to establish the amount of damages he will suffer in the event it is finally determined that Town was not entitled to the preliminary injunction. The Court will grant the Town ten (10) days to submit a responsive affidavit. The Court will thereafter proceed to fix the limit of damages pursuant to CPLR § 2512 (1).

The Court notes that the second cause of action of the complaint in the second action seeks review of the determination of the Town Board to demolish the house on the ground that it is arbitrary and capricious and without any basis in law or fact. Such claims should have been raised by article 78 proceeding rather than a plenary action (see New York City Health & Hosps. Corp. v McBarnette, 84 NY2d 194, 204 [1994]). Accordingly, the second cause of action of the complaint in action number 2 shall be converted to an

article 78 proceeding (see Town of Fishkill v Royal Dutchess Props., 231 AD2d 511, 512 [2d Dept 1996]).

Accordingly it is

ORDERED that the motion of plaintiff in action number 2 for a preliminary injunction enjoining the demolition of the subject house is hereby granted, and it is further

ORDERED that the above injunction shall be conditioned upon posting an undertaking in the amount of \$10.00, and it is further

ORDERED that the motion of plaintiff in action number 1 for a preliminary injunction enjoining the defendant in such action from residing in the subject house unless and until it is deemed habitable by the Town's building inspectors is hereby granted, and it is further

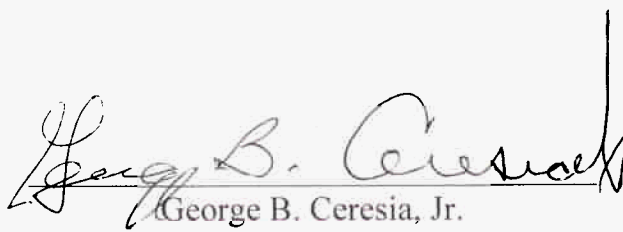
ORDERED, that John Haas, within fifteen (15) days of the date hereof, submit an affidavit with respect to the damages he will suffer as a result of imposition of the preliminary junction granted herein, and that the Town of Schodack have ten (10) days thereafter to respond; and it is further

ORDERED that the Town's cross-motion in action number 2 is hereby denied, and it is further

ORDERED that the second cause of action of the complaint in action number 2 is hereby converted to a CPLR Article 78 proceeding.

This shall constitute the Decision and Order of the Court.

Dated: Troy, New York
May 25, 2007



George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

Action Number 1:

Order to Show Cause dated May 11, 2005; Affidavit of Jeffrey Conlin sworn to May 6, 2005 with Exhibits A-D annexed;
Memorandum of Law dated May 10, 2005;

Affidavit of John Haas sworn to May 21, 2005; Affirmation of Andrew S. Jacobs, Esq. dated May 23, 2005 with Exhibit A annexed;

Reply Affirmation of Catherine M. Hedgeman, Esq. dated May 23, 2005 with Exhibits A-D annexed;

Affidavit of Catherine M. Hedgeman, Esq. sworn to November 28, 2005 with Exhibits A and B annexed;

Action Number 2:

Order to Show Cause dated November 18, 2005; Summons dated November 17, 2005; Affidavit of John Haas sworn to November 18, 2005; Affirmation of Andrew S. Jacobs, Esq. dated November 18, 2005 with Exhibits A-D annexed;

Notice of Cross-Motion dated November 23, 2005; Affidavit of Beth Knauf Secor "verified" November 22, 2005 with Exhibits A-I annexed; Affidavit of Jeffrey F. Budrow sworn to November 23, 2005 with Exhibits A-C annexed; Affidavit of Gary Ziegler sworn to November 23, 2005 with Exhibits A-J annexed;
Memorandum of Law dated November 23, 2005;

Affidavit of John Haas sworn to December 5, 2005; Affirmation of Andrew S. Jacobs, Esq. dated December 3, 2005 with Exhibit A annexed;

Complaint dated June 2, 2006;

Supplemental Affidavit of Jessica R. Wilcox, Esq. sworn to April 6, 2007;
Supplemental Affidavit of Jeffrey F. Budrow sworn to April 6, 2006 [sic] with Exhibits A-D annexed.