Tricarico v Tow of Oyster Bay
2010 NY Slip Op 33391(U)
November 4, 2010
Supreme Court, Nassau County
Docket Number: 12781/2009
Judge: F. Dana Winslow
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SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

TRIAL/IAS, PART 5
NASSAU COUNTY

JOANNE TRICARICO & JOSEPH TRICARICO,

Plaintiffs,

-against-

MOTION SEQ. NO.: 001
MOTION DATE: 8/20/10

THE TOWN OF OYSTER BAY; ANGELO A. DELLIGATTI; JOSEPH D. MUSCARELLA, ANTHONY D. MACAGNONE, CHRIS J. COSCHIGNANO, & ROSE MARIE WALKER, Individually and in their capacities as councilmembers of the Town of Oyster Bay, GREGORY GAMMOLVO, ESQ., individually and in his capacity as Town Attorney for Oyster Bay; JAMES STEFANICH, individually and in his capacity as receiver of taxes for the Town of Oyster Bay,

INDEX NO.: 12781/2009

Defendants.

The following papers having been read on the motion (numbered 1-3):

Notice of Motion...1
Affirmation in Opposition..2
Reply Affirmation...3

Motion pursuant to CPLR 3211[a][1], [7], 3014, 3024[a] by the defendants the Town of Oyster Bay; Angelo A. Delligatti; Joseph Muscarella, Anthony D. Macagnone; Chris J. Coschignano; and Rose Marie Walker Gregory Gammolvo and James Stefanich for an order, *inter alia*: (1) dismissing the plaintiffs' complaint; or (2) alternatively, for an order requiring the plaintiff to separately state and number the allegations of the complaint; and/or to provide a more definitive statement of the matters pleaded therein; and/or for additional relief striking stated prejudicial and scandalous matter from the complaint is hereby determined as follows.

The plaintiffs Joanne Tricarico and Joseph Tricarico are residents of the

Town of Oyster Bay ["the Town"] and currently the owners of a four-family, residential property – built in the 1890's – which they purchased at some point in 2004 (Cmplt., ¶ ¶ 14-15; 21-23). According to the plaintiffs, their home's status as a legal, four-family residence pre-dated the Town's Zoning Code and was therefore "automatically grand-fathered in" as a non-confirming, but legal, pre-existing use (Cmplt., ¶¶ 14-15, 21, 24, 46-47; 63, 77-78, 88).

Prior to 2007, the property had been classified by the Nassau County Assessor as a "Class one" residential property (*see generally*, Real Property Tax Law § 1802[1])(Cmplt., ¶¶ 3, 14, 18). In 2007, and despite the "grand-fathered" residential status of the property, the Nassau County Assessor reclassified the plaintiffs' property as a "Class two" commercial property pursuant to Real Property Tax Law § 1802[1](Cmplt., ¶¶ 14, 21-23, 49).

The classification allegedly resulted in a tax increase from $4,000.00 in 2004, to approximately $41,000.00 in years thereafter (Cmplt., ¶¶ 14-15, 28, 37, 39-40; 78-91). The plaintiffs contend that they detrimentally relied on the property's Class one status when they originally acquired it, and that they only learned of the reclassification when their mortgage lender informed them that the escrow maintained in conjunction with their mortgage was depleted (Cmplt., ¶¶ 3, 14, 18, 33-35, 38).

According to the plaintiffs, the County's reclassification of their property was part of an illegal conspiracy and unconstitutional "scheme" by which their property taxes were increased by the Town and the County absent proper notice and/or an opportunity to be heard (Cmplt., ¶¶ 14-15, 21-23, 41, 44-46, 55, 66, 70). Moreover, at some point prior to the reclassification, an inspector for the Town or County – it is not stated definitively which – allegedly "invaded" and/or illegally inspected and trespassed on the property without a warrant, so as to "legitimatize" in some unstated fashion, the County's reclassification (Cmplt.,¶ 21-22).

In substance, the plaintiffs contend that the reclassification was improper and illegal, because at that time, it was zoned as a "grand-fathered" residential property, thereby precluding the County from later reclassifying it as a Class two, "commercial" property (Cmplt., ¶¶ 14, 49).

The plaintiffs contend that despite the property's existing residential character both the Town and County deliberately ignored its legal, residential status – which was a matter of public record – and then violated the plaintiffs' rights by altering the previously existing tax classification (Cmplt., ¶¶ 55, 58).

According to the plaintiffs, the Town receives a portion of the tax increase, and thereby "stands to benefit" from the improper reclassification scheme – which the plaintiffs have also described as a "scam" a "farce" and the product of "capricious greed" by the County and Town (Cmplt., ¶ 55-56, *see also*, ¶¶ 23-24, 41, 46-47; 59, 70).

The plaintiffs acknowledge at various points that the County Assessor – not the defendant Town of Oyster Bay – was the entity which actually performed the reclassification and which possessed the legal authority to do so under the Real Property Tax Law (*e.g.*, Cmplt., ¶¶ 28, 37).

Nevertheless, the plaintiffs allege that the defendant Town of Oyster Bay and the various Town officials sued herein [collectively, "the Town"] were "complicit" in the County's illegal action because they supposedly "condoned" the reclassification (Cmplt., ¶¶ 41-42, 46).

The Town allegedly did so – and at the same time colluded with the County – because the Town was aware of the property's grand-fathered, residential status, but never advised or informed the County of this fact – even though it purportedly had a duty to do so. Similarly, the Town failed to "recognize" and "admit" – in some unstated context – that the subject residence was a legally grand-fathered, residential property (Cmplt., ¶¶ 14, 23, 33, 37, 46, 48-50); nor did it arrange for a hearing prior to the County's unconstitutional decision to reclassify the property – a decision which was "nothing short of criminal" (Cmplt., ¶¶ 66-67 (Cmplt., ¶¶ 14-15, 23, 41, 46, 55-56).

With respect to the opportunity to be heard, the plaintiffs implicitly acknowledge that they could have mounted an administrative challenge to the Assessor's initial determination, but that they concedely did not do so (Cmplt., ¶ 14). They refrained from pursing this available avenue of redress, however, allegedly because they purchased the property from a senior citizen and mistakenly believed the seller had been given a senior citizen "tax break" which

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was later rescinded (Cmplt., ¶ 14).

By summons and verified complaint dated January, 2010, the plaintiffs commenced the within action as against the Town of Oyster Bay and various Town officials in both their individual and official capacities.

The plaintiffs' 124-paragraph, 35 page verified complaint contains twelve, separately captioned causes of action, including claims denominated as sounding in unjust enrichment, infliction of emotional distress, trespass/illegal search and seizure, negligent supervision of personel, and conspiracy. The complaint also contains several constitutional claims, which similarly assert, in substance, that the Town and County conspired to deprive the plaintiffs of due process and/or that their property was unlawfully taken, without notice and/or an adequate opportunity (Cmplt., ¶¶ 30-31; 43-52; 68-71).

Notably, the twelfth cause of action, entitled, in part, "Loss of Sleep, Loss of Consortium, and Diminished Services," includes an eighteen-paragraph account of the alleged physical, financial and psychological ill-effects which resulting from the challenged tax increase (Cmplt., ¶¶ 106-124 *see also*, ¶¶ 58-59).

With respect to the latter species of damage, the complaint alleges, *inter alia*, that the tax increase has threatened the "future existence" of the plaintiffs' family and their marriage and also caused a litany of stated injuries, including among other things, migraine headaches, high blood pressure, severe sleep loss (valued at $100.00 for each hour lost); "frazz[ling]" of the plaintiffs' nerves; diminished positive temperament; "lost ski weekends," and "trauma" inflicted on the plaintiffs' children during their "formative years," allegedly resulting in a projected diminution in their developmental and educational prospects (Cmplt., ¶¶ 58-59; 116-117, 118, 122- 124).

The complaint contains a number of multi-sentence paragraphs comprised of dialogue-type narratives and rhetorical commentary, including one paragraph which observes, *inter alia*, that "God knows how this [the tax] is affecting the children" and which then rhetorically asks,"How can you put a value on something like trauma to the formative years of the children?" (*e.g.*, Cmplt., ¶¶ 39, 55).

As a consequence of the alleged injuries flowing from the tax, the plaintiffs contend they are now entitled to relief including, *inter alia*, an injunction as against the Town; money damages (punitive and compensatory); expedited

restoration of the property's Class one status – and a "prompt apology" (Cmplt., ¶¶ 55-56, 59, 69-70; pp 34-35).

By notice dated April, 2010, the Town moves pre-answer to dismiss the complaint (CPLR 3211[a][7]), and/or alternatively, for relief pursuant to CPLR 3014, 3024[a], [b], requiring the plaintiff to separately state, number and more definitely craft the allegations made, and/or for further relief striking stated matter from the complaint as prejudicial and scandalous (CPLR 3024 [b]). The motion should be granted to the extent indicated below.

Although on a motion to dismiss pursuant to CPLR 3211[a], a pleading will be given the benefit of every possible favorable inference (*Sokoloff v. Harriman Estates Development Corp.*, 96 NY2d 409, 414 [2001] *see, People ex rel. Cuomo v. Coventry First LLC*, 13 NY3d 108, 115 [2009]; *Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]), nevertheless, "bare legal conclusions with no factual specificity" and inherently incredible allegations are not entitled to such favorable consideration (*Godfrey v. Spano*, 13 NY3d 358, 373 [2009]; *Maas v. Cornell Univ.*, 94 NY2d 87, 91-92 [1999]; *Daub v. Future Tech Enterprise, Inc.*, 65 AD3d 1004, 1005; *Kaisman v. Hernandez*, 61 AD3d 565, 566; *Dinerman v. Jewish Bd. of Family & Children's Services, Inc.*, 55 AD3d 530, 531).

Here, the plaintiffs have cobbled together a series of disjointed and conclusory allegations, none of which comprehensibly link the Town defendants to the County-imposed reclassification for the purposes of imposing liability on the claims advanced.

The assumption underlying all of the plaintiffs' claims, is the obscure theory that the Town was duty-bound to take some sort of affirmative action and/or to intervene in some unstated way, with respect to the County-administered assessment and classification process. The complaint expands on this theme by alleging – in varying permutations – that the Town defendants were complicit in and condoned the County's improper conduct, by failing to offer the plaintiffs a hearing; by failing to "recognize" or "admit" the residential character of the property; and/or by failing to inform the County, in some unspecified fashion, of the property's "long-standing" residential status (*e.g.*, Cmplt., ¶¶ 14, 18, 31, 33, 46).

However, the complaint never identifies with particularity, the source of the

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alleged legal duty which would require, or even authorize, a Town to supply hearings to homeowners aggrieved by a County-rendered property reclassification; nor does the complaint identify in what context or precisely how a Town would be duty-bound to apprise the County of a property's existing zoning status, *i.e.*, how a Town would "admit" and/or "recognize" the zoning status of a residence for the purposes of the plaintiffs' claims – much less how and why the Town would – or could – be required to intervene in a County-administered property tax assessment matter.

Even assuming that a Town could or did intervene and then advise or consult with the County in some manner relating to a parcel's pre-existing zoning status and tax assessment classification, the complaint does not articulate why – or allege that – the Town's projected involvement would have altered the County's independently rendered determination.

Nor do the plaintiffs' municipal conspiracy claims set forth cognizable causes of action as against the Town defendants. Although the complaint alleges, in summary fashion, that the Town and the County "have the power and ability" to unconstitutionally conspire together, it never explains why this is so upon the particular facts presented (Cmplt., ¶¶ 41, 46).

Instead, the complaint relies on a series of nebulous and circular allegations to the effect that, *inter alia*, the Town stood to gain by the tax increase; that it knew of and never informed the County of the property's grand-fathered status; that the Town was motivated by "capricious greed"; and that its conduct therefore must have been collusive and conspiratorial (Cmplt., ¶¶ 31-32, 41, 46-47, 66). Significantly, "conclusory, vague, and general allegations" of conspiratorial conduct – such those made here – will not suffice to defeat a motion to dismiss (*see generally*, *Diederich v. Nyack Hosp.*, 49 AD3d 491, 494; *Ford v. Snashall*, 285 AD2d 881, 882; CPLR 3013 *see also, Planck v. SUNY Bd. of Trustees*, 18 AD3d 988, 990 *cf.*, *Alexander & Alexander of N.Y. v. Fritzen,* 68 NY2d 968, 969 [1986]).

Lastly, while pleadings should ideally consist of "plain and concise," single-allegation paragraphs (*see,* CPLR 3014, 3024[a]), a significant number of the complaint's numbered paragraphs are cluttered with extraneous, narrative

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digressions and rambling factual commentaries, which further obscure the substantive import of the claims advanced (*cf.*, *Rapaport v. Diamond Dealers Club, Inc.*, 95 AD2d 743, 744; *Hochstadt v. City of New York*, ___ Misc3d ___, 2007 WL 4113672 [Supreme Court, New York County, 2007](*e.g.*, Cmplt., ¶¶ 39, 58-59, 61-63).

Since the Court has granted the Town defendants' motion to dismiss the complaint pursuant to CPLR 3211[a][7], it is unnecessary to reach the remaining branches of their motion.

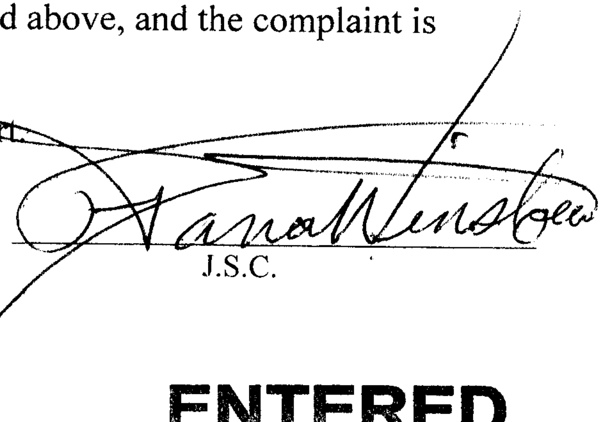
The Court has considered the plaintiffs' remaining contentions and concludes that they are insufficient to defeat the defendants' motion.

Accordingly, it is,

ORDERED; that the motion pursuant to, *inter alia*, CPLR 3211[a][7], by the defendants is **granted** to the extent indicated above, and the complaint is **dismissed.**

This constitutes the Order of the Court.

Dated: November 4, 2010



J.S.C.

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