

Incorporated Vil. of E. Williston v Muzio

2012 NY Slip Op 30482(U)

February 16, 2012

Sup Ct, Nassau County

Docket Number: 009064-10

Judge: Vito M. DeStefano

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,

Justice

TRIAL PART 15
NASSAU COUNTY

INCORPORATED VILLAGE OF EAST
WILLISTON,

Plaintiff,

-against-

JOHN AND THERESA MUZIO, as owners of
Premises identified as 8 Sumter Avenue within
the Incorporated Village of East Williston,

Defendants.

Decision and Order
MOTIONS SUBMITTED:
November 9, 2011
MOTION SEQUENCE:14
INDEX NO. 009064-10

The following papers and the attachments and exhibits thereto have been read on the motions:

Notice of Motion	1
Affirmation in Opposition	2
Reply Affirmation	3

In an action pursuant to, *inter alia*, Village Law § 7-714 and Executive Law § 382(3), the Plaintiff, Incorporated Village of East Williston ("Village"), moves for an order granting it summary judgment. Alternatively, the Village seeks an order, pursuant to CPLR 3126, *inter alia*, striking the answer of the Defendants, John and Theresa Muzio (the "Muzios").

For the reasons that follow, the Village's motion is granted in part and denied in part and, upon searching the record, the court dismisses certain claims contained in the Village's complaint as delineated herein.

At a hearing held on November 16, 2009, the Board of Trustees for the Village ("Board") directed that a notice of unsafe building be affixed to the premises located at 8 Sumter Avenue, East Williston, New York (Ex. "A" to Motion). The subject premises, a single-family home, is owned by the Muzios. The Muzios were afforded a period of time to abate the problems which rendered the premises unsafe and the hearing was scheduled to reconvene on November 30, 2009 (Ex. "A" to Motion).

At the conclusion of the November 30, 2009 hearing, after which it was determined that the Muzios did not abate the problems, the Muzios were directed to: 1) make repairs to the roof of the subject premises that would render the roof safe and watertight; 2) retain the services of an electrician to inspect the wiring on the premises and provide a certification regarding its safety; 3) remove unlicensed and unregistered vehicles from the premises; 4) remove the rubbish and debris and unmaintained brush and grass from the premises; and 5) provide a report from a licensed structural engineer regarding the stability of the premises and making such repairs as required to render the structure stable for habitation. The Muzios were required to comply with the Board's directives by December 15, 2009, at which time the Board was scheduled to reconvene to assess compliance (Ex. "A" to Motion).

The Muzios did not comply with the directives and, accordingly, at the December 15, 2009 hearing, pursuant to Chapter 22 of the Municipal Code of the Incorporated Village of East Williston ("Village Code"), the Board ordered the house to be repaired, vacated, or demolished, as the facts may warrant, with the costs of such (plus a 50% service charge) being charged as a municipal lien or levied as a tax against the property. The Board also determined to cut, trim, and/or remove the brush, grass and refuse on the property, with the costs of such to be billed to the Muzios (Ex. "B" to Motion). The Board concluded the meeting and ordered that it "shall take all such further steps it deems necessary to effectuate the accomplishment of the determinations as set forth above" (Ex. "B" to Motion at p. 10).

Thereafter, the Village commenced the instant action pursuant to, *inter alia*, Village Law § 7-714 and Executive Law § 382(3).¹ The Village's complaint, which is inartfully and

¹ Village Law § 7-714 provides as follows:

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used, or any land is divided into lots, blocks or sites in violation of this act, or of any local law or other regulation made under authority conferred thereby, the proper local authorities of the village, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. All issues in any action or proceeding for any of the purposes herein stated have preference over all other civil actions and proceedings.

According to Executive Law § 382(3):

Where the construction or use of a building is in violation of any provision of the uniform code or any lawful order obtained thereunder, a justice of the supreme court at a special term in the judicial district in which the building is located, may order the removal of the building or an abatement of the condition in violation of such provisions. An application for such relief may be made by the secretary, an appropriate municipal officer, or any other person aggrieved by the violation.

confusingly drafted, purports to assert three causes of action. In the first cause of action, the Village seeks a preliminary injunction allowing it to enter the premises to assess the stability and safety of the structure and that the Village be empowered to render the structure stable with the costs of such being assessed against the Muzios. In the second cause of action, the Village seeks a permanent injunction pursuant to Village Law § 7-714 restraining the Muzios from: continuing to permit the structure to remain a dangerous condition and in a state of disrepair; continuing the hazards to remain; and not obeying the orders of the Board. In the last cause of action, the Village seeks the costs of repair to be incurred by the Muzios in accord with the Village Code (Ex. "E" to Reply Affirmation at ¶¶ 59-66).

The Muzios answered the complaint after which the Village served the within motion seeking, *inter alia*, summary judgment.

With respect to the claims pursuant to Village Law § 7-714 and Executive Law § 382(3), the Village met its prima facie burden on the motion by presenting proof that: the Muzios' property is in violation of section 304.2 of the New York State Property and Maintenance Code, and chapters 18 and 22 of the Village Code (collectively referred to as "violations"); the Muzios have failed to remedy the violations; and the Muzios continue to maintain their property in violation of the applicable codes despite the resolutions passed by the Board (*see Incorporated Village of Freeport v Jefferson Indoor Marina, Inc.*, 162 AD2d 434 [2d Dept 1990]).

The Muzios oppose the Village's motion and claim that the subject premises is not in violation of any code, regulation or rule. The Muzios also assert that "[n]o valid Village resolutions exit [sic] . . . [A] Board of Trustee resolution is required for any and all of the Villages actions outside the daily scope of responsibility. No such resolutions exist" (Affirmation in Opposition at ¶ 44).

The Muzios' conclusory assertions that the subject premises is not in violation of existing codes, etc., are insufficient to defeat the Village's motion. Moreover, the December 15, 2009 resolution of the Board that it "take all such further steps it deems necessary to effectuate the accomplishment of the determinations as set forth above", provides authority to bring and maintain the claims brought pursuant to Village Law § 7-714 and Executive Law § 382(3) (*see Village Law §§ 7-714 and 4-400(1)(d); Village of Waterford v Camproni*, 200 AD2d 930 [3d Dept 1994] [board of trustees' resolution ordering defendant to reimburse the village and directing the village attorney to "take appropriate steps to achieve the reimbursement" constituted authorization to commence legal action]).

Accordingly, it is hereby ordered that the Village is granted partial summary judgment to the extent that: it seeks a judgment permanently enjoining the Muzios from continuing and permitting the violations cited by the Board; that the Village is "empowered to enter upon the

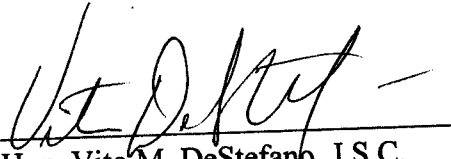
premises” to “assess the stability and safety of the structure and to render such information as can be obtained to assess the same, and that the Village be empowered to take such steps as it deems required to render the structure stable”, including the making of “such repairs and/or directing that the structure be vacated or demolished as the facts may warrant”; that the potentially dangerous conditions on or about the subject premises requiring an investigation by a qualified licensed engineer be investigated and if necessary repaired, and that the [Muzios] be ordered to provide access upon reasonable notice to any party of the subject premises for inspection by a qualified licensed engineer selected by the Village; and that the Village is empowered to remove the “unlicensed and unregistered vehicles from the property” and make “arrangements for the brush, grass and refuse upon the property to be cut and or trimmed and removed as needed with the Village thereafter being empowered to both remove the vehicles and clear the brush grass and refuse on the property” (Complaint at pp. 22-25).

Pursuant to CPLR 3212(b), the court searches the record and hereby grants the Muzios partial summary judgment dismissing the complaint to the extent it seeks: “the costs of such repair, vacation [sic] and demolition together with a service charge of 50 percent being charged against the land on which the structure existed as a municipal lien; or cause such costs to be added to the tax rolls as an assessment or to be levied as a special tax against the and upon which the structure stands or did stand or to be recovered in a suit of law against the [Muzios]”; that the Muzios “be ordered to pay the reasonable cost” of an “engineer for the investigation, report and the engineer’s time for supervision of any repair made as a result of said engineer’s report”; and that the costs of the removal of the vehicles and clearing of the brush, grass and refuse on the property be billed to the Muzios and that upon”such costs being unpaid for thirty days after the mailing of a bill, the costs shall become a lien upon the property and shall be added to and become a part of the taxes next to be assessed and levied upon such and shall bear interest at the same rate as, and be collected and enforced in the same manner as Village taxes” (Complaint at pp. 22-25). In this regard, the court notes that such relief cannot be obtained in this proceeding (*see* Village Law § 4-414; *D’Angelo v Cole*, 67 NY2d 65 [1986]).

It is further ordered that the branches of the Village’s motion to, *inter alia*, strike the Muzios’ answer and for additional relief, are denied as academic in light of the provisions of this order which grant the Village partial summary judgment. However, the court notes that the Muzios’ conduct, which includes disobedience of court orders, dilatory conduct and willful and contumacious refusal to appear for depositions, would otherwise have warranted striking their answer (CPLR 3126; *Howe v Jeremiah*, 51 AD3d 975 [2d Dept 2008] [willful or contumacious character of party’s conduct can be inferred from the party’s repeated failure to respond to demands and/or comply with discovery orders]).

This constitutes the decision and order of the court.

DATE: February 16, 2012


Hon. Vito M. DeStefano, J.S.C.

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