Amityville Mobile Home Civic Assn. Corp. v Frontier Park Corp.
2014 NY Slip Op 30902(U)
March 25, 2014
Supreme Court, Suffolk County
Docket Number: 29026/13
Judge: Joseph C. Pastoressa
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Index No: 29026/13

SUPREME COURT OF THE STATE OF NEW YORK
IAS/TRIAL PART 34- SUFFOLK COUNTY

COPY

PRESENT:
HON. JOSEPH C. PASTORESSA
JUSTICE OF THE SUPREME COURT

_____X
AMITYVILLE MOBILE HOME CIVIC ASSOCIATION CORP.,

Plaintiff(s),

-against-

FRONTIER PARK CORP., FRONTIER PARK CO., LLP, FRONTIER PARK CO., LLC AND NEW FRONTIER II, LLC,

Defendant(s).
_____X

The defendants move for an order pursuant to CPLR §3211 (a) (2), (3), (7) and §3212 granting summary judgment dismissing the complaint; and the plaintiff cross-moves for an order to disqualify defendants counsel.

This action is the fifth lawsuit commenced since 2012 by plaintiff with respect to the Suffolk County approved and Town of Babylon approved closure and redevelopment of Frontier Park for Mobile Homes ("Frontier Park"). This action like all the others plaintiff's counsel has brought is meritless. The verified complaint asserts five causes of action. The first cause of action seeks a declaratory judgment that the six-month Change of Use Notices are nullities, based upon a contention that such notices cannot be issued until after the end of a lease term and based upon a further contention that the residents were entitled to leases for 2013 (expiring on December 31, 2013); the second cause of action seeks a declaratory judgment that defendants acted in bad faith and unfair dealing by allegedly failing to offer leases to residents of Frontier Park in October 2011 and October 2012 for the 2012 and 2013 calendar year, respectively; the third cause of action seeks damages for fraud, alleging that the residents of Frontier Park were falsely told, on or about May 1, 2013, that the "status quo" would be maintained for six months; the fourth cause of action seeks damages for tortious interference with prospective economic advantage, apparently based upon allegations that defendants somehow "destroy[ed] plaintiff's economic relationship with the Developer of Frontier Trailer Park" for the purpose of depriving the residents of their opportunity

to receive a $20,000 relocation fee; and the fifth cause of action seeks an injunction to enjoin defendants from terminating all tenancies at Frontier Park based upon the "Notice to Quit dated 5/01/13 terminating possessory rights on 10/31/13."

None of plaintiff's claims have any merit. Indeed, the foundational basis of the entire lawsuit-the argument that the change of use notice could not be issued prior to the end of any lease term- is patently erroneous and belied by the express language of the governing statute.

Plaintiff's first cause of action contends that defendants failed to properly execute leases for 2012 and 2013, and, that had such leases been properly issued, the residents would have had written leases through December 31, 2013. Despite the fact that we are now long past such lease expiration date, rendering arguments regarding the 2012 and 2013 leases moot, plaintiff appears to contend regardless that if leases for 2013 had been executed, the Change of Use Notice could not have been served until the expiration of the lease term, i.e., after December 31,2013, and it therefore seeks a Declaratory Judgment that the six-month Change of Use Notice dated May 1, 2013 is a nullity. This argument is belied by the express contrary provisions of RPL§233 (b)(6)(i):

> A manufactured home park owner or operator may not evict a manufactured home tenant other than for the following reasons: (6) (i) the manufactured home park owner or operator proposes a change in the use of the land comprising the manufactured home park...Whenever a manufactured home park owner or operator gives a notice of proposed change of use to any manufactured home owner, the manufactured home park owner or operator shall, at the same time, give notice of the proposed change of use to all other manufactured home owners in the manufactured home park who will be required to secure other accommodations as a result of such proposed change of use. Eviction proceedings based on a change in use shall not be commenced prior to six months from the service of notice of proposed change in use or the end of the lease term, whichever is later.

Nowhere does the statute restrict, in any manner whatsoever, the time when a change of use notice can be served. Indeed, the statute specifically authorizes the issuance of such notices when the park owner "proposed a change in the use of the land, and requires that "whenever" such notice is given, it shall also be given to "all other manufactured home owners" "who will be required to secure other accommodations as a result." The statute merely restricts the time when eviction proceedings ultimately based on a change of use can "be commenced."

Plaintiff's argument that the Six-Month Change of Use could not be served until after December 31, 2013 because Frontier Park tenants were entitled to leases for 2013 and the notice could not be served until the expiration of the lease term is nowhere supported by the statute.

Under the statute, all tenants in good standing, regardless of whether they have written leases, must be offered a lease each year unless a change of use notice has been previously served. However, the service of the change of use notice is the act which relieves a manufactured home park owner from having to offer tenants leases for the following year. To wit, RPL §233(e) (2) (I) provides, in pertinent part, as follows:

> On or before, as appropriate, (a) the first day of October of each calendar year with respect to a manufactured home owner then in good standing who is not currently a party to a written lease with a manufactured home park owner or operator or (b) the ninetieth day next preceding the expiration date of any existing written lease between a manufactured home owner then in good standing and a manufactured home park owner or operator, the manufactured home park owner or operator shall submit to each such manufactured home owner a written offer

> to lease for a term of at least twelve months from the commencement date there thereof unless the manufactured home park owner or operator has previously furnished the manufactured home owner with written notification of a proposed change of use pursuant to paragraph six of subdivision b of this section.

Indeed, it is uncontroverted that on February 20, 2014 the Commissioner of the Division of Housing and Community Renewal (DHCR) rendered a determination in response to an administrative complaint filed by the plaintiff against the defendants expressly advising that it has not found any violations of RPL §233 in connection with plaintiff's filed complaints and that it was closing its file with respect to those complaints.

Although plaintiff's counsel was aware of said determination it was nowhere mentioned in any of the papers plaintiff's counsel submitted to the court.

Thus, the statute expressly authorizes the park owner or operator to serve the change of use before the expiration of the lease term. In fact, unless a change of use notice has been served, a park owner must offer all tenants in good standing a lease for another year (either before October 1 for tenants without written leases, or 90 days before the expiration of the lease, for tenants with written leases).

In other words, if plaintiff's position were correct that a change of use notice could not be served until after the expiration of a written lease term, a park owner would never be able to serve a change of use notice because the park owner would always be obligated to offer a new lease before the expiration of the previous one. Under plaintiff's argument, a landlord would be obligated to keep its mobile home tenants in perpetuity.

Here, the DHCR itself has confirmed that a six-month change of use notice may be served prior to the expiration of a lease, precisely to avoid the creation of a perpetual tenancy. In a Memorandum in Support of RPL §233 the DHCR wrote as follows:

> "The addition of the park owner's right to evict tenants based on a change in land use would insure that renewal leases would not institute a perpetual tenancy which would block desirable development of the land."

McKinney's 1994 Session Laws of New York, Vol. 2, pp. 2750-2751 (emphasis added).

Plaintiff's counsel brought a similar meritless challenge to a six-month change of use notice on behalf of residents of a mobile home park in Syosset that was rejected by the Appellate Division (see, Drasser v STP Associates, LLC, 90 AD3d 701).

The defendants were entitled to serve the Six-Month Change of Use Notices at any time as long as a change of use of the property had been proposed and, therefore, all of plaintiffs' causes of action based on alleged violations of RPL §233 must be dismissed, as a matter of law, as there were no such violations. The defendants were expressly permitted by statute to serve the Six-Month Change of Use Notice when they did (i.e., on April 30, 2013), and would still have been permitted to do so even if Frontier Park tenants had leases for 2013.

Plaintiff's characterization of the Six-Month Change of Use Notice as a "Notice to Quit," which purported to terminate the tenancies of all residents effective 10/31/13 is incorrect. The Change of Use Notice did not state that any tenancies were thereby terminated and categorically did not effect, or purport to effect, the termination of any tenancies. The Change of Use Notice was merely the statutory notice required by RPL §233 (b)(6)(i).

The plaintiff's cause of action seeking a declaratory judgment that defendants acted in bad

faith by failing to offer Frontier Park residents leases in October 2011 and October 2012 for the calendar years 2012 and 2013, similarly is without merit. In fact, plaintiff has failed to refute that all Frontier Park residents were offered leases for 2012 and 2013 as required by RPL §233. Moreover, even if plaintiff's claims were true, they are moot. No residents of Frontier Park were evicted based upon the expiration of their tenancies in 2012 or 2013 and 2013 is now over. Thus, even if plaintiff is correct that Frontier Park residents were wrongfully deprived of leases for 2013, since 2013 is now over there is no relief that can be granted to plaintiff, and no harm has come to the mobile park residents who have been permitted to reside at the premises throughout.

Plaintiff's cause of action seeking damages for fraud, alleging that the residents of Frontier Park were falsely told, on or about May 1, 2013, that the "status quo" would be maintained for six months, and the cause of action seeking damages, based upon a theory of tortious interference with prospective economic advantage are also patently without merit. The plaintiff's counsel's arguments while somewhat incoherent, appear to claim that defendants somehow destroyed plaintiff's economic relationship with the developer of Frontier Trailer Park. The fraud cause of action does not specify the manner in which plaintiff purportedly sustained their alleged damages. The tortious interference cause of action appears to allege that residents of Frontier Park were somehow deprived of the opportunity to receive the $20,000 relocation fee provided for in the approved Relocation Plan.

These allegations are demonstrably false, as to date it is uncontroverted that upwards of twenty-three (23) residents in the Phase I area of Frontier Park have already been approved by Long Island Housing Partnership for $20,000 relocation assistance payments.

Plaintiff's cause of action for fraud based upon defendants' alleged deception of Frontier Park Tenants fails to allege that plaintiff, or any residents of Frontier Park took any action in justifiable reliance on defendants' alleged misrepresentations, nor has plaintiff alleged that any damages were suffered by it or by the residents of Frontier Park (see, Nanomedicon, LLC v Research Foundation of State Univ. Of N.Y., 112 AD3d 594). The complaint is simply devoid of any allegations of actions taken by plaintiff or by Frontier Park residents in reliance on defendants' alleged misrepresentations and is equally devoid of any allegations as to the manner in which plaintiff or Frontier Park tenants were allegedly damaged (see, Water St. Leasehold LLC v Deloitte & Touche, LLP, 19 AD3d 183). The claims of fraud and tortious interference are meritless to the level of frivolous.

Plaintiff's causes of action based on the false premises that residents of Frontier Park were deprived of their opportunity to receive the $20,000 payments provided for in the approved Relocation Plan due to defendants' issuance of the Six Month Notices are similarly meritless. Several residents have filed application for relocation assistance with Long Island Housing Partnership ("LIHP") pursuant to the provisions of the Relocation Plan, and it is apparent that, as of Janary 28, 2014, at least 23 have been approved by LIHP for receipt of such payments. The Verified Complaint fails to allege, let alone cite, a single example of a resident who has been deprived of eligibilty for relocation assistance as a result of the issuance of the Six Month Notice.

The plaintiff's counsel in its submissions to the court offer no substantive response to defendants' motion to dismiss.

Instead, plaintiff's counsel cross-moved for an order to disqualify defendants' counsel due to an alleged conflict of interest and an alleged application of the advocate-witness rule. Nowhere in its cross-motion does plaintiff articulate any factual issues for which defendants' counsel would

be called to testify, nor does plaintiff articulate precisely what conflict of interest exists requiring disqualification. Plaintiff's cross-motion contains nothing more than generic conclusory unsubstantiated claims of conflict and attorney-advocate violations without providing a single meritorious factual basis for such claims. Plaintiff's counsel, amongst other misapprehensions of the law, apparently believes that joint representation is, ipso facto, a basis for disqualification, which, of course, is not the law (see, Fischer v Deitsch, 198AD2d 327).

Plaintiff's counsel erroneously cites to and relies upon disciplinary Rule 5-102(b), a rule that has been replaced five years ago (see, Rule 3.7 of the New York Rules of Professional Conduct). Furthermore, the plaintiff's unexplained delay in seeking counsel's disqualification lends credence to defendants' contention that the cross-motion to disqualify was improperly made for tactical purposes (see, Lopez v Precision Papers, 99 AD2d 507; Schmidt v Magnetic Head Corp., 97 AD2d 151, 163). Clearly, the cross-motion is frivolous. In reply papers, plaintiff impermissibly attempts to raise new matters for the first time, which, in any event, are largely incoherent arguments. Inexplicably, plaintiff's reply papers make reference that they were submitted in support of a motion for an order by plaintiff, which is not before the court, to enjoin termination of tenancies, and evictions.

The defendants' motion is granted and the complaint dismissed. The plaintiff's cross-motion is denied.

This shall constitute the decision and order of the court.

DATED: March 25, 2014

HON. JOSEPH C. PASTORESSA, J.S.C.

FINAL DISPOSITION ✓ **NON-FINAL DISPOSITION** ____

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