

Gold Coach Apts. Inc. v Town of Babylon

2014 NY Slip Op 32745(U)

October 9, 2014

Sup Ct, Suffolk County

Docket Number: 2012-32259

Judge: Jeffrey Arlen Spinner

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Supreme Court of the State of New York
JAS Part XXI - County of Suffolk

PRESENT:

HON. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

GOLD COACH APARTMENTS INC,
Petitioners,

For a Judgment under Article 78 of
Civil Practice Law and Rules'

- against -

TOWN OF BABYLON;
TOWN OF BABYLON TOWN BOARD;
TOWN OF BABYLON ZONING BOARD OF APPEALS;
RICH SHAFFER, Supervisor, Town of Babylon;
ANN MARIE JONES, Commissioner of Planning & Development;
KATE SHREVE, Senior Engineer, Town of Babylon;
DENISE MANOOGIAN, Planning Examiner, Town of Babylon;
MEAGHAN O'KEEFE, Town of Babylon Attorney;;
JEROME P SMITH, Town of Babylon Building Inspector; and
PHILIP BERDOLT, Commissioner, Town of Babylon
Department of Public Works,

Respondents.

DECISION & ORDER

INDEX NO: 2012-32259

MTN SEQ NO: 001 - CASEDISP
ORIG MTN DATE: 11/08/2012

MTN SEQ NO: 002 - CASEDISP
ORIG MTN DATE: 11/14/12

FINAL MTN DATE: 05/14/14

UPON the following paper numbered 1 read on this application:

- 1 Petition [001];
 - 2 Respondents' Cross-Motion [002];
 - 3 Petitioner's Opposition & Reply;
 - 4 Respondents' Opposition & Reply;
- it is,

ORDERED, that the application of Petitioner is hereby denied in all respects; and the application of Respondents is hereby granted to the extent set forth herein below.

Petitioner moves this Court [001] for an Order granting the following relief:

- 1 Granting Petitioner the Certificate of Occupancy for the property known as 14 Baywood Street, West Babylon, NY;
- 2. In the alternative, requiring the Town of Babylon to hold the required public hearings prior to any condemnation of property for 14 Baywood Street, West Babylon, NY;
- 3. In the alternative, granting Petitioner full compensation for the taking of any property at 14 Baywood Street, West Babylon, NY;

4. Granting Petitioner full compensation for the property taken by condemnation/dedication at 14 Baywood Street, West Babylon, NY;
5. Granting Petitioner economic damages since the date of the application for the Certificate of Occupancy;
6. Voiding the dedication deed to Town of Babylon to the extent the execution of the deed was coerced.

Respondents moves this Court for an Order [002], pursuant to CPLR 3211(a)(1), 3211(a)(5), 7804(f) *et seq*, dismissing the Petition as against Respondents, together with sanctions and attorney fees.

STATEMENT OF FACTS

On November 13, 2007, Lynn Home Builders Corp (Lynn Home), predecessor in interest to Petitioner herein, filed tow applications with Respondent ZBA, under Case Numbers 07-400a and 070400b, pertinent to a parcel of land located on Baywood Street, Hamlet of West Babylon, Town of Babylon, County of Suffolk, State of New York, designated as Suffolk County Tax Map Numbers 0100-139.00-03.00-006.000 and 0100-139.00-03.00-007.00, seeking street frontage, lot area, front and rear yard and additional variances, which would allow, if granted, the subdivision of the parcel into two building lots.

On January 17, 2008, Respondent ZBA granted both of Lynn Home's variance applications, after a public hearing, requiring that certain restrictive covenants be filed with the Office of the Suffolk County Clerk as regarding said lots, subject to 12 conditions set forth therein, the resolutions for said approvals then being filed in the Office of the Town Clerk of the Respondent BABYLON on January 22, 2008.

On January 18, 2008, Lynn Home filed a subdivision application with the Planning Board of Respondent BABYLON pertinent to the same parcel of land on Baywood Street, seeking to divide said parcel into two lots, to be known as 14 and 24 Baywood Street, which was approved by Resolution No. 2008-138, after a public hearing, creating the two lot subdivision, subject to the same restrictive covenants, and the same 12 conditions, as required by the approvals of Respondent ZBA.

Thereafter, on November 13, 2008, the Covenants and Restrictions, imposed as a requirement of the approvals of both the Respondent ZBA and the Planning Board of the Respondent BABYLON, were file in the Office of the Suffolk County Clerk by applicant Lynn Home.

Condition number 6 of both of the Respondent ZBA's decisions regarding the subject parcels, and condition number 5 of the Planning Board of Respondent BABYLON's decision, regarding each of the lots of the subject parcels, requires that, "the developer must adhere to the standard offsite requirements imposed by the Highway Division of the Department of Public Works of Respondent BABYLON. In that regard, on March 19, 2009 the Highway Requirement Sheet of Respondent BABYLON was executed by the builder/owner of the subject parcels, which included the requirement of a 12.5 foot dedication of land for road widening purposes for each lot, containing therein specific language at the bottom thereof, by which the owner, "agrees that prior to the issuance of Certificate of Occupancy covering the structures on the above premises all of the above requirements must have first been completed at the cost and expense of the owner or persons other than the Town of Babylon", which would obviously include the required 12.5 foot dedication for road widening purposes.

DETERMINATIONS

When considering a CPLR 3211 motion made against a complaint, a court must take the allegations as true, and resolve all inferences which reasonably flow therefrom in favor of the pleader (*see: Cron V Hargro Fabrics Inc*, 91 NY2d 362 [1998]). A motion to dismiss based on documentary evidence, pursuant to CPLR 3211(a)(1), will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of plaintiff's claims (*see: Fontanetta V Doe*, 73 AD3d 78 [2 Dept 2010]; *Fortis Financial Services LLC V Fimat Futures USA Inc*, 290 AD2d 383 [1 Dept 2002]). Where evidentiary material is submitted on a motion to dismiss a complaint, pursuant to CPLR 3211(a)(7), and the motion is not converted to one of summary judgment, the question becomes whether plaintiff has a cause of action, not whether plaintiff has stated one, and unless it has been shown that a material fact claimed by plaintiff to be a fact, is not a fact at all, dismissal should be eventuated (*see: Fishberger V Voss*, 51 AD2d 627 [2 Dept 2008]; *Geggenheimer V Ginsburg*, 43 NY2d 268 [1977]).

The land owner is in no way harmed by the required dedication discussed herein above, as §213-232 of the Code of the Town of Babylon specifically states, in relevant part, that, "Notwithstanding any other provisions of this chapter, any building plot in any district shall be credited in reduction of overall lot size requirements and front yard requirements with footage dedicated to the Town of Babylon for the widening of streets...". Therefore, as a matter of law, Petitioner's claims that the dedication violates the dimension of the property or the filed Covenants and Restrictions are baseless, and the Petition herein must be dismissed based on submitted evidentiary material.

A zoning board may, where appropriate, impose reasonable conditions and restrictions as are directly related and incidental to the proposed use of the property, and aimed at minimizing the adverse impact to an area that might result from the grant of a variance (*see: St Onge V Donovan*, 71 NY 507 [1988]). As a threshold matter, it is well settled law that a Court may not substitute its own judgment for that of the reviewing board (*see: Janiak V Planning Board of the Town of Greenville*, 159 AD2d 574 [2 Dept], *appeal denied*, 76 NY2d 707 [1990]; *Mascony Transport and Ferry Service V Richmond*, 71 AD2d 896 [2 Dept 1979], *aff'd*, 49 NY2d 969 [1980]). Therefore, if the decision rendered by the reviewing board is within the scope of the authority delegated to it, the Court may not interfere and annul it, unless said decision is arbitrary, capricious or unlawful (*see: Castle Properties Co V Ackerson*, 163 AD2d 785 [3 Dept 1990]). Furthermore, the determination of a reviewing board must be sustained if it is rational and supported by substantial evidence, even if the reviewing Court would have reached a different result (*see: PMS Assets Ltd V Zoning Board of Appeals of Village of Pleasantville*, 98 NY2d 683 [Ct of App, 2002]).

The decision of Respondent ZBA, necessary to make the two lots of the subject parcels buildable, contained certain requirements, including the Covenants and Restrictions and conditions referenced herein above, which said reviewing board determined as requisite to minimizing adverse impact to the area that might result from the grant of the variances. The Court notes that the Planning Board of Respondent BABYLON, can to the same conclusion, and imposed the same Covenants and Restrictions and conditions in granting their decision, which was necessary to subdivide the parcels as separate lots. As previously stated herein, condition 6 of the Respondent ZBA's decision, and condition 5 of the Planning Board of Respondent BABYLON, necessitated compliance with the standards of offsite requirements imposed by the Highway Division of the Department of Public Works of Respondent BABYLON, which included the dedication of a 12.5 foot strip of land for road widening purposes, said requirements having been included

in the Highway Requirement Sheet signed by the land owner prior to Petitioner's ownership thereof. Petitioner having failed to demonstrate any reason upon which these requisite Covenants and Restrictions and conditions were not legitimately imposed, or were arbitrary or capricious, and evidentiary materials having been submitted to support their legal existence, therefore as a matter of law, Petitioner's claims, and therefore the Petition herein, must be dismissed.

In the alternative, the Court notes that Petitioner has failed to name the Planning Board of Respondent BABYLON, as a party hereto, and even if it could be argued that they were not a necessary party (in and of itself a clear reason for dismissal of the Petitioner herein), it is perplexing to contemplate what the result would be, were the Court to find against Respondent ZBA with regard to the Covenants and Restrictions and conditions, since they would all remain in place as prerequisites to the granting of Certificates of Occupancy, since their status as requirements for the recognition of the subdivision of the parcels would remain intact, and Certificates of Occupancy would not be issued for separate structures on an unsubdivided lot. Therefore, as a matter of law, the Petition herein must be dismissed.

Still further in the alternative, the Court notes Respondents' argument that the causes of action alleged herein are time barred, due to the expiration of the controlling statutes of limitations, when approaching the claims made in the Petition herein from a variety of considerations.

First, pursuant to Town Law §267-c, a party aggrieved by a decision of a board of appeals must institute an Article 78 proceeding within 30 days of the date the decision is filed in the office of the Town Clerk, and at the core of the instant proceeding is a challenge to the Covenants and Restrictions and conditions imposed by Respondent ZBA, same having been filed in the Office of the Town Clerk of Respondent BABYLON on January 22, 2008, the time for any challenge thereof having lawfully expired in February, 2008, long before this action was commenced in November, 2012 (*see: Proskin V Donovan*, 150 AD2d 937 [3 Dept 1989]), stating that to the extent that the petitioner's objections relate to the facial validity of a condition, they are foreclosed by their failure to timely challenge it).

Second, if there were a challenge to the decision of the Planning Board of Respondent BABYLON, which the Court does not find in the instant proceeding, Petitioner would also be foreclosed from maintaining said claim as time barred, in that Town Law §282 sets a 30 day statute of limitations, and therefore to time to challenge said board's decision expired in November, 2008.

Third, a claim of inverse condemnation by Petitioner would have accrued no later than March, 2009, when the developer/owner executed the Highway Requirement Sheets, so that such a claim would also be barred by its three year statute of limitations, as set forth in CPLR §214[4], which would have expired in March of 2012, not November, 2012 (*see: Linzenberg V Town of Ramapo*, 1 AD3d 321 [2 Dept 2003]).

Therefore, any and all causes of action Petitioner has or might have set forth in the instant Petition are time-barred by the relevant statutes of limitations, and therefore the Petition herein must be dismissed.

Submission of Proposed Orders are required by Part 21 Rules by both proponents and opponents of all motions. The Court notes that no Proposed Orders were submitted by Respondents herein.

For all of the reasons stated herein above, and in the totality of the papers submitted for consideration,

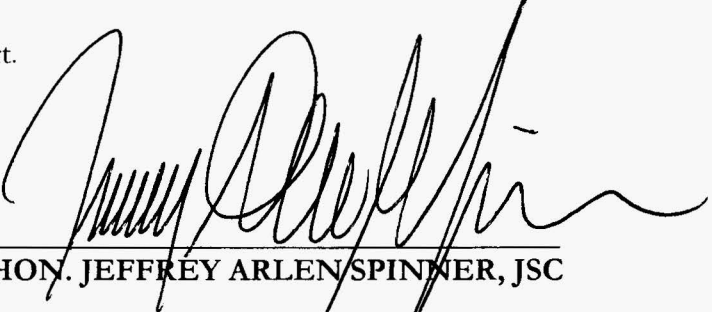
herein, it is, therefore,

ORDERED and **ADJUDGED**, that the application of Respondents herein is hereby granted; that the Petition is hereby dismissed; and that this proceeding is therefore disposed; and it is further

ORDERED, that Counsel for Respondents is hereby directed to serve a copy of this Order, with Notice of Entry, upon all parties, upon the Clerk of this Court and upon the Suffolk County Clerk within 20 days of the date this order is entered by the Suffolk County Clerk.

This constitutes the Decision and Order of the Court.

Dated: Riverhead, New York
October 9, 2014


HON. JEFFREY ARLEN SPINNER, JSC

✓ FINAL DISPOSITION	NON-FINAL DISPOSITION
✓ SCAN	DO NOT SCAN