

Billaris v Incorporated Vil. of Bayville

2014 NY Slip Op 33941(U)

June 27, 2014

Supreme Court, Nassau County

Docket Number: 12521/13

Judge: Antonio I. Brandveen

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: **ANTONIO I. BRANDVEEN**
J. S. C.

HOLLY BILLERIS,

Plaintiff,

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 12521/13

- against -

Motion Sequence No. 001, 002,
003

THE INCORPORATED VILLAGE OF
BAYVILLE, JAMES A. GOOLSBY, in his
capacity as Building Inspector of THE
INCORPORATED VILLAGE OF BAYVILLE
and the ZONING BOARD OF APPEALS OF THE
INCORPORATED VILLAGE OF BAYVILLE,

Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2, 3</u>
Answering Affidavits	<u>4, 5, 6</u>
Replying Affidavits	<u>7, 8</u>
Briefs: Plaintiff's / Petitioner's	<u>9</u>
Defendant's / Respondent's	<u>10</u>

The plaintiff-petitioner moves (Sequence 001) for order annulling the building inspector's June 12, 2013 and July 12, 2013 denials of applications for a fence permit; annulling the Zoning Board of Appeals of the Incorporated Village of Bayville's denial of plaintiff-petitioner's appeal of the building inspector's June 12, 2013 and July 12, 2013 determinations; and directing the building inspector to issue the fence permit requested by the plaintiff-petitioner in the May 13, 2013 fence permit application. The

[* 2]
defendants-respondents oppose the complaint and the petition.

The Court determines the plaintiff-petitioner fails to satisfy the burden of showing the denial for the application of a fence permit was arbitrary and capricious. In opposition, the defendants-respondents show there was a rational basis for the decisions (*Pell v. Board of Education*, 34 NY2d 222). The plaintiff-petitioner was advised of the basis for the decision to deny the application for a fence was it would create a prohibited public nuisance and would impede public access to the Shore Road. The Court's role is only to ascertain whether that determination was made in a matter as prescribed by law, and the Court finds that the determination was made in a matter as prescribed by law.

The defendants-respondents move (Sequence 002) for an order dismissing the petition based upon the plaintiff-petitioner's lack of standing for the plaintiff-petitioner's commencement of the proceeding after expiration of the statute of limitations. The plaintiff-petitioner opposes the motion.

The Court determines defendants-respondents satisfy their burden of showing the plaintiff-petitioner commenced the proceeding after the expiration of the statute of limitations.

The application for the fence permit was denied by letter dated June 12, 2013, hence the statute of limitations for commencing the instant proceeding lapsed on July 12, 2013, but the instant proceeding commence on October 15, 2013. That circumstance is beyond 30 days after the filing of the decision of the Zoning Board of Appeals

[*3]
(Arrandale Civil Association v. Zoning Board of Appeals of the Village of Great Neck,
27 AD3d 732). The plaintiff-petitioner's attempt to appeal that decision did not toll the
statute of limitations nor provide a right to a hearing (Village Law § 7-712-c; *Mtr. of De*
Milio v. Borghard, 55 NY2d 216).

The defendants-respondents move (Sequence 003) for an order pursuant to CPLR
3211(a)(1), (3), (4), (5) and (7) and CPLR 217 dismissing the complaint. The
plaintiff-petitioner opposes the motion.

The Court determines defendants-respondents satisfy their CPLR 3211(a)(1), (3),
(4), (5) and (7) and CPLR 217 burdens. In opposition, the plaintiff-petitioner fails to
show otherwise.

ORDERED, the plaintiff-petitioner motion (Sequence 001) is denied for order
seeking to annul the building inspector's June 12, 2013 and July 12, 2013 denials of
applications for a fence permit; to annul the Zoning Board of Appeals of the Incorporated
Village of Bayville's denial of plaintiff-petitioner's appeal of the building inspector's
June 12, 2013 and July 12, 2013 determinations; and to direct the building inspector to
issue the fence permit requested by the plaintiff-petitioner in the May 13, 2013 fence
permit application, and it is also,

ORDERED, the defendants-respondents' motion (Sequence 002) is granted for an
order dismissing the petition based upon the plaintiff-petitioner's lack of standing for the
plaintiff-petitioner's commencement of the proceeding after expiration of the statute of

limitations, and it is further,

ORDERED, defendants-respondents' motion (Sequence 003) is granted for an order pursuant to CPLR 3211(a)(1), (3), (4), (5) and (7) and CPLR 217 dismissing the complaint.

So ordered.

Dated: **June 27, 2014**

ENTER:



J. S. C.

FINAL DISPOSITION

ENTERED

JUN 30 2014

NASSAU COUNTY
COUNTY CLERK'S OFFICE