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| <b>BT Holdings, LLC v Village of Chester</b>                                                                                                                                                                                   |
| 2016 NY Slip Op 32836(U)                                                                                                                                                                                                       |
| May 11, 2016                                                                                                                                                                                                                   |
| Supreme Court, Orange County                                                                                                                                                                                                   |
| Docket Number: 1480/2015                                                                                                                                                                                                       |
| Judge: Elaine Slobod                                                                                                                                                                                                           |
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 ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X

BT HOLDINGS, LLC,

DECISION & ORDER

Plaintiff,

INDEX NO. 1480/2015

-against-

VILLAGE OF CHESTER and VILLAGE OF  
CHESTER BOARD OF TRUSTEES,

Defendants.

-----X

P R E S E N T: HON. ELAINE SLOBOD, JSC

The following sets of papers numbered 1 to 6 were considered on the defendants' motion to dismiss this action and to impose sanctions for frivolous conduct:

- Notice of motion, Marzolla affirmation, and exhibits A-E; memorandum of law 1,2
- Pressler affirmation in opposition, Wolinsky affidavit, Ferrandino affidavit, and exhibits A-Q; memorandum of law 3,4
- Marzolla reply affirmation and exhibits F-S; reply memorandum of law 5,6

Upon review of the foregoing, it is ORDERED that the defendants' motion is denied.

This action stems from the plaintiff's efforts over a number of years to develop a parcel of property, a portion of which was located in the Town of Chester, and the remainder of which was located in the Village of Chester. In this action, the plaintiff alleges, in essence, that the Village reneged on stipulations settling two prior proceedings, one in the Appellate Division and

one in state Supreme Court, wherein the defendants agreed to create a new zoning designation (RM-N) for the plaintiff's property once the Village had annexed the portion located in the Town.

The plaintiff filed the current complaint in state Supreme Court alleging five causes of action: (1) breach of contract regarding a stipulation reached in the Appellate Division; (2) breach of the duty of good faith and fair dealing with respect to that stipulation; (3) breach of contract regarding a stipulation reached in state Supreme Court; (4) breach of the duty of good faith and fair dealing with respect to the Supreme Court stipulation; and (5) an unconstitutional taking in violation of 42 USC §1983.

This action was removed to federal court where the Hon. Cathy Seibel dismissed the fifth cause of action because it was not ripe for adjudication, and remanded the first four causes of action to this Court. The defendants now move to dismiss those remaining causes of action.

The plaintiff's first and third causes of action state viable claims for breach of contract. Although under the stipulations the plaintiff's project was "subject to review and approval by the Village of Chester Planning Board," these phrases can be interpreted to refer only to the development and construction of the project, and not to the adoption of the new

RM-N zone. In any event, the defendants do not deny that the Planning Board's review of the adoption of the new zone was advisory only.

As for the proposition that the Village Board cannot contract away the exercise of its legislative function, the Village Board exercised its legislative function when it approved the stipulations of settlement.

The third and fourth causes of action alleging breach of the duty of good faith and fair dealing are not necessarily duplicative of the first and third causes of action alleging breach of contract, even though all four causes of action are based upon the Village Board's failure to adopt the RM-N zone for the plaintiff's property. See *Elmhurst Dairy, Inc. v Bartlett Dairy, Inc.*, 97 AD3d 781 (2d Dept 2012). As the defendants point out, there is no express provision in the stipulations obligating the defendants to adopt the RM-N zone, and yet one wonders what the stipulations could otherwise mean. On the face of it, it appears that the plaintiff was led down a primrose path.

Regarding the plaintiff's request for specific performance and lost profits, the plaintiff's notice of claim contains sufficient factual detail regarding the specifics of their claims. That notice was not required to spell out every theory upon which the plaintiff will proceed and every remedy which might flow from the claims. See *Saponara v Lakeland Central*

[\*4]  
School District, \_\_ AD3d \_\_, 2016 NY Slip Op 02836 (2d Dept 2016).

Finally, neither the Town of Chester, which did what it stipulated to do, nor the Planning Board of the Village of Chester, which was not a party to the stipulations, are necessary parties to this action.

This matter is hereby scheduled for a further status conference on May 31<sup>st</sup>, 2016, at 9:15 a.m., at the Orange County Courthouse, 285 Main Street, Goshen, New York.

This decision constitutes the order of the Court.

E N T E R

Dated: May 11, 2016  
Goshen, New York

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HON. ELAINE SLOBOD, JSC

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