

Matter of Voutsinas v Schlenone
2016 NY Slip Op 33086(U)
April 18, 2016
Supreme Court, Nassau County
Docket Number: 11198/14
Judge: Antonio I. Brandveen
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

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

In the Matter of the Application of

TRIAL / IAS PART 35
NASSAU COUNTY

GEORGE VOUTSINAS and SEDENA REALTY,
LLC,

Index No. 11198/14

Plaintiff,

Motion Sequence No. 005

- against -

J. ROBERT SCHLENONE, CHAIRMAN, RAYMOND
D. VENTURA, MEL FRIEDMAN, SALVATORE
ROMANELLO and JOSEPH KELLY, COLLECTIVELY
THE BOARD OF APPEALS OF THE VILLAGE OF
ROCKVILLE CENTER; THE BUILDING
DEPARTMENT OF THE VILLAGE ROCKVILLE
CENTRE and DANIEL V. CASELLA,
SUPERINTENDENT OF BUILDINGS; THE VILLAGE
OF ROCKVILLEN CENTRE; FRANCIS X. MURRAY,
MAYOR AND TRUSTEE, NANCY HOWARD,
DEPUTY MAYOR AND TRUSTEE, EDWARD J.
OPPENHEIMER, TRUSTEE, MICHAEL SEPE,
TRUSTEE and EMILIO F. GRILLO, TRUSXTEE,
COLLECTIVELY THE BOARD OF TRUSTEES OF
THE VILLAGE OF ROCKVILLE CENTRE,

Defendant.

The following papers having been read on this motion:

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

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The petitioners/plaintiffs move pursuant to CPLR 2221(d) for an order granting them leave to reargue from a court order dated November 30, 2015, and on reargument, granting the relief requested. The petitioners/plaintiffs contend the Court misapprehended both fact and law, as set forth in the papers in support of this motion. The petitioners/plaintiffs argue they are entitled to reargument for the Court overlooked or misapprehended the key pertinent facts in the record. The petitioners/plaintiffs assert their property abuts the municipal parking field. The petitioners/plaintiffs also seek pursuant to 22 NYCRR § 130-1.1(c)(3) an order for the award of sanctions and attorney's fees. The petitioners/plaintiffs maintain the second application was independent and substantially different. The petitioners/plaintiffs point to the votes of August 27 and October 22 to support their assertions. The petitioners/plaintiffs directly challenge the minutes. The petitioners/plaintiffs indicate the respondents/defendants violated their non-waivable statutory duty to file a complete return of the proceeding before the Board of Zoning Appeals. The petitioners/plaintiffs challenge the substantial occupancy permit law.

In opposition, the respondents/defendants contend this motion is inappropriate and without merit. The respondents/defendants assert the petitioners/plaintiffs attempt to relitigate issue already briefed by the parties, and decided by the Court. The respondents/defendants aver fail to show that the Court misapprehended any material facts or erred in its legal conclusions. The respondents/defendants argue the Court

properly denied the motion for summary judgment by the petitioners/plaintiffs. The respondents/defendants maintain the Court did not misapprehend the location of the subject property. The respondents/defendants indicate, assuming the Court misapprehended the location of the subject property, the subject property is a freestanding building and properly subject to Local Law 4-2005. The respondents/defendants argue the Court correctly dismissed the petitioners/plaintiffs' challenge to the respondents/defendants' substantial occupancy law. The respondents/defendants maintain the petitioners/plaintiffs are not entitled to an award of sanctions and attorney' fees.

In reply to the opposition by the respondents/defendants, the petitioners/plaintiffs argue the Court has misapprehended the key fact by the respondents/defendants's overly misleading. The petitioners/plaintiffs assert the petitioners/plaintiffs' property immediately abuts the adjacent parking field number three. The petitioners/plaintiffs aver that the property needs no parking variance. The petitioners/plaintiffs claim, particularly as applied to the property located immediately adjacent to the municipal parking field number three, the parking ordinance that requires "freestanding" restaurant buildings to have on site parking or obtain a variance while exempting "interior" restaurant buildings is void both facially and surely as applied. The petitioners/plaintiffs directly challenge the "minutes" of the August 27, meeting. The petitioners/plaintiffs indicate they have a right to a trial. The petitioners/plaintiffs maintain the denial of the second application was

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arbitrary and without support as a matter of law where the second application was significantly different. The petitioners/plaintiffs challenge the 2004 code amendment, and add Local Law 4-2005 and Chart IV fail to meet tests as a matter of law, facially or as applied. The petitioners/plaintiffs challenge also challenge to the substantial occupancy permit.

The petitioners/plaintiffs commenced a hybrid CPLR Article 78 proceeding, under Supreme Court, County of Nassau, index number 11198-14 to challenge the actions of the Board of Zoning Appeals of the Village of Rockville Centre, and in the plenary portion to challenge the validity of certain ordinances of the Village of Rockville Centre.

The Court grants the petitioners-plaintiffs request for leave to reargue from the court order dated November 30, 2015. The Court determines the petitioners-plaintiffs, on reargument, do not satisfy the CPLR 2221(d) burden. The petitioners-plaintiffs do not show, in the moving papers, that the Court overlooked or misapprehended matters of fact or law in determining the prior motion.

The petitioners-plaintiffs do not satisfy the 22 NYCRR § 130-1.1 burden of showing the respondents/defendants' conduct was frivolous. The Court considered, among other issues, whether (1) the circumstances in this matter where the respondents/defendants' conduct took place, including the time available for investigating the legal or factual basis of the respondents/defendants' conduct, and (2) whether or not the respondents/defendants' conduct was continued when any lack of legal or factual

basis was apparent, should have been apparent, or was brought to the attention of the respondents/defendants' attorneys or the respondents/defendants. The petitioners-plaintiffs do not show that the respondents/defendants asserted any material factual statements that are false (22 NYCRR § 130-1.1[c]).

ORDERED that the branch of the petitioners-plaintiffs' motion is DENIED to affect the prior court order, and it is also,

ORDERED that the branch of the petitioners-plaintiffs' motion is DENIED for the award of sanctions and attorney' fees.

So ordered.

Dated: April 18, 2016

ENTER:



J. S. C.

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