Matter of Skyhigh Murals-Colossal Media Inc. v Board of Stds. and Appeals of the City of N.Y.
2017 NY Slip Op 30088(U)
January 13, 2017
Supreme Court, New York County
Docket Number: 157348/2016
Judge: Arthur F. Engoron

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 37

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In the Matter of the Application of

SKYHIGH MURALS-COLOSSAL MEDIA INC.,

Petitioner,

For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules

-against-

BOARD OF STANDARDS AND APPEALS OF THE CITY OF NEW YORK,

Respondent.

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Index Number: 157348/2016

Sequence Number: 001

Decision and Order

Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 and 2, were used on Petitioner's Article 78 Petition to annual a Resolution of the Board of Standards and Appeals that affirmed the Department of Building's denial of Petitioner's request, essentially, for permission to install an advertising sign on a building in Williamsburg, Brooklyn:

Papers Numbered:

Verified Petition – Exhibits (Memorandum of Law) 1
Verified Answer – Exhibits (Memorandum of Law) 2
Petitioner's Reply Memorandum of Law . . . . .

Upon the foregoing papers, the Petition is granted; and the Board of Standards and Appeals' Resolution, dated May 17, 2016 and filed August 3, 2016, which affirmed the Department of Buildings' Final Determination, dated July 27, 2015, denying Petitioner's request for permission to install an advertising sign, is hereby annulled and vacated.

Background

The following facts are undisputed unless otherwise indicated. Petitioner Skyhigh Murals-Colossal Media Inc. ("Colossal") is the "global leader of hand painted outdoor advertising," including "large commercial signage." Colossal seeks to install a non-illuminated 900-square foot hand-painted advertising sign (the "advertising sign") on a building located at 32 Berry Street (the "Building") and situated at the northwest corner of the intersection of Berry Street and North 12th Street, Williamsburg, Brooklyn, in an M1-1 zoning district. The advertising sign would be installed on the south-facing facade of the Building, which fronts North 12th Street.

Directly across and on the southwest side of North 12th and Berry Streets is a residential building known as 34 Berry Street. A district boundary line runs parallel to and through the center of North 12th Street, separating the M1-1 zoning district on the north side of North 12th Street (in which the Building is located) from an MX-8 Special Mixed Use District on the south side of North 12th Street (in which 34 Berry Street is located). The east side of the Building, fronting Berry Street, faces McCarren Park.

The proposed advertising sign would be located within an M1-1 zoning district, but be situated within 100 feet of the North 12th Street line and facing, at an angle of more than 165 degrees, the district boundary of the MX-8 zoning district.

The Zoning Resolution of the City of New York ("Zoning Resolution" or "ZR") sets forth the City's zoning districts with their governing regulations. The Zoning Resolution is comprised of separate articles that contain the regulations for each type of zoning district, as follows: Article II, residence districts; Article III, commercial districts; Article IV, manufacturing districts; and Articles VIII through XIII for each Special Purpose District. The pertinent regulations at issue herein are as follows:

Article 1: General Provisions
Chapter 2: Construction of Language and Definitions
ZR § 12-10 Definitions
* * * * *
Manufacturing District (2/2/11)
A "Manufacturing District" includes any district whose designation begins with the letter M." For example, an "M1" District includes any district whose designation begins with the symbol "M1."

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Residence District (2/2/11)

A "Residence District" includes any district whose designation begins with the letter "R." For example, an "R6" District includes any district whose designation begins with the symbol "R."

* * * * *
Special Mixed Use District (12/10/97)

The "Special Mixed Use District" is a Special Purpose District designated by the letters "MX" in which special regulations set forth in Article XII, Chapter 3, apply. The #Special Mixed Use District# appears on the #zoning maps# superimposed on paired M1 and #Residence Districts#, and its regulations supplement or modify those of the M1 and #Residence Districts#. The #Special Mixed Use District# includes any district that begins with the letters "MX."

Article 4: Manufacturing District Regulations
Chapter 2: Use Regulations

ZR § 42-561 Restrictions along district boundary located in a street
M1 M2 M3

In all districts, as indicated, and within 100 feet of the #street line# of any #street# or portion thereof in which the boundary of an adjoining #Residence District# is located, or which adjoins a #public park# of one-half acre or more, #advertising signs# that face at an angle of less than 165 degrees away from such #Residence District# or park boundary shall not be permitted and all other #signs# facing at less than such an angle shall conform with all the #sign# regulations applicable in C1 Districts as set forth in Sections 32-61 to 32-68, inclusive, relating to Sign Regulations.

The regulations regarding signage within a "Special Mixed Use District" designated as MX-8 are contained in ZR § 123-40, which expressly adopts and applies the signage regulations for C6-1 zoning districts as contained in ZR § 32-60. However, the instant case involves signage within a "Manufacturing District" and without a "Special Mixed Use District."

In August of 2014, Colossal sought, essentially, approval from the Department of Buildings ("DOB") to install the advertising sign by submitting a "ZRD1: Zoning Resolution Form" to DOB's Brooklyn Borough Commissioner, seeking confirmation that under ZR § 42-561 the proposed advertising sign may be installed on the Building adjoining the district boundary of MX-8, a "Special Mixed Use District." In March 2015, the Commissioner denied the request upon the ground that, inter alia, the proposed advertising sign fronting North 12th Street is "directly across from ... [a] residential building ... at 34 Berry Street," which "is situated within the district boundary of M1-2/R6A and MX-8 Special Mixed Use zoning district" and "shall be appropriately treated as residential." Colossal appealed the March 2015 denial to the DOB's First Deputy Commissioner for Technical Affairs, arguing that the proposed advertising sign does not adjoin a "Residence District." By Final Determination issued on July 27, 2015, the First Deputy Commissioner denied Colossal's appeal upon the ground that the proposed advertising sign would face "directly towards the Residence District boundary at effectively zero degrees away from the Residence District boundary [and] does not comply with ZR 42-561." Colossal appealed to BSA. By Resolution dated May 17, 2016 and filed on August 3, 2016, BSA affirmed the DOB's Final Determination upon the ground that, inter alia, "as the subject advertising sign faces directly towards the Residence District contained within the adjacent Mixed Use District, it is prohibited by ZR § 42-561."

On September 1, 2016, Colossal commenced the instant CPLR Article 78 Proceeding to annual BSA's Resolution; BSA opposes the Petition.

Discussion
This case presents a straight-forward issue of "pure legal interpretation of statutory terms," which does not require deference to BSA's construction of the applicable Zoning Resolution provisions. Matter of Raritan Dev. Corp. v Silva, 91 NY2d 98, 102 (1997). Specifically, the Court must determine the plain meaning of the terms "Residence District" and "Special Mixed Use District" as they are defined in ZR § 12-10, and whether the term "Residence District" has a different meaning when used in ZR § 42-561.

The language of the Zoning Regulations "could not be clearer." Matter of Raritan Dev. Corp. v Silva, 91 NY2d at 103. Indeed, this Court is surprised that BSA has muffed such a simple and obvious statutory interpretation. ZR § 12-10 defines a "Residence District" as one "whose designation begins with the letter 'R'"; and a "Special Mixed Use District" as one "designated by the letters 'MX'." Contrary to BSA's contention – which apparently is unsupported by any factual or legal support – the Zoning Resolution does not state or provide that a "Special Mixed Use District" has a "co-designation" with "Residence" and "Manufacturing" districts, or that it is both a "Residence" and "Manufacturing" district. Rather, the Zoning Resolution makes unequivocally clear that an MX designation is the only designation for a "Special Mixed Used District." That the Zoning Resolution states that a "Special Mixed Use District" is "superimposed on **paired** M1 and 'Residence Districts' (emphasis added)," does not change the result. According to Webster's New World Dictionary (Third College Edition), the word "pair" is defined as "a single thing made up of two corresponding parts that are used together." Thus, applying the plain meaning doctrine, an MX District is a single district comprised of two parts – a Residence District and a Manufacturing District. This construction is supported by the fact that under ZR § 12-10, MX districts are governed by "special regulations set forth in Article XII, Chapter 3 … [and] its regulations **supplement or modify** those of the M1 and #Residence Districts# (emphasis added)."

The language of ZR § 12-10 is clear and unambiguous, and not susceptible of conflicting interpretations. Thus, construing the statutory language "so as to give effect to the plain meaning of the words used" (Patrolmen's Benev. Ass'n of City of N.Y. v City of N.Y., 41 NY2d 205, 208 [1976]), this Court finds that the term "Residence District," as defined in ZR § 12-10 and as used in ZR § 42-561, is limited to districts whose sole and primary designation is an "R" designation, and does not include that part of an MX district which is a residential district or area. Tellingly, BSA offered no evidence of – nor even claimed – that it had long interpreted "Residence Districts" under ZR § 42-651 to include residential districts or areas within a "Special Mixed Use District." There is "no statutory or practical support for BSA's strained construction" of the Zoning Resolution (Matter of Raritan Dev. Corp. v Silva, 91 NY2d at 107), that because the proposed advertising sign "faces directly towards the Residence District contained within the adjacent Mixed Use District, it is prohibited by ZR § 42-561."

Simply put, the zoning district across the street from the Building upon which Colossal proposes to paint the advertising sign is a "Special Mixed Use District," designated as MX-8, and not a "Residence District." Therefore, ZR § 42-561 does not prohibit Colossal from installing the proposed advertising sign.

The Court has considered BSA's other arguments and finds them to be unavailing.

Conclusion

Petition granted; the Board of Standards and Appeals' Resolution, dated May 17, 2016 and filed August 3, 2016, affirming the Department of Buildings' denial of Petitioner's request, essentially, for permission to install an advertising sign on a building in Williamsburg, Brooklyn, is hereby annulled and vacated; and Petitioner may install its proposed advertising sign.

Dated: January 13, 2017

Arthur F. Engoron