

22-50 Jackson Ave. Assoc. LP v County of Suffolk
2019 NY Slip Op 33180(U)
October 17, 2019
Supreme Court, Suffolk County
Docket Number: 419/2019
Judge: Joseph A. Santorelli
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 3/4/19
SUBMIT DATE 9/5/19
Mot. Seq. # 01 - dismissed
Mot. Seq. # 02 - MG; case disposed

-----X
22-50 JACKSON AVENUE ASSOCIATES,
LP,

Petitioner/Plaintiff,

-against-

COUNTY OF SUFFOLK, SUFFOLK
COUNTY LEGISLATURE, PUBLIC WORKS,
TRANSPORTATION and ENERGY
COMMITTEE OF THE SUFFOLK COUNTY
LEGISLATURE, SUFFOLK COUNTY
DEPARTMENT OF PUBLIC WORKS and
THE COMMISSIONER OF THE SUFFOLK
COUNTY DEPARTMENT OF PUBLIC
WORKS,

Respondents/Defendants.
-----X

CERTILMAN BALIN ADLER & HYMAN, LLP
Attorneys for Petitioner/Plaintiff
100 MOTOR PKWY, STE 560
HAUPPAUGE, NY 11788

RUSKIN MOSCOU FALTISCHEK, PC
Attorneys for Respondents/Defendants
1425 RXR PLAZA
UNIONDALE, NY 11556

Upon the following papers numbered 1 to 147 read on this Article 78 petition and motion to dismiss; Notice of Motion/ Order to Show Cause and supporting papers 1 - 53 (#01) & 54 - 77 (#02); ~~Notice of Cross Motion and supporting papers~~; Answering Affidavits and supporting papers 78 - 131 (#02); Replying Affidavits and supporting papers 103 - 147 (#02); ~~Other~~; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

In this hybrid article 78 and declaratory judgment proceeding, the petitioner filed a petition with thirteen causes of action. The respondents move to dismiss the petition pursuant to CPLR 3211(a)(1), (2), (5), and (7), on the grounds that the defense is grounded on documentary proof, the court does not have jurisdiction over the subject matter of this action, the action is time barred, and for failure to state a cause of action upon which relief can be granted.

The petitioner is the owner of property which is part of the "Heartland" development in Brentwood, New York that is not located within the geographical boundaries of any sewer district in Suffolk County, but has a reserved and committed capacity of 471,000 gallons per day, hereinafter referred to as "GPD", of sewage flow in "Suffolk County Sewer District No. 3 - Southwest" that was

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received from the New York State Office of Mental Health. Petitioner and the other land owners petitioned the Town Board of the Town of Islip to establish a new "Pilgrim State Planned Redevelopment District", hereinafter referred to as "PSPRD", and to reclassify their property in the new PSPRD. The land owners proposed to redevelop the property as "Heartland Town Square" pursuant to the provisions of a "Conceptual Master Plan". In connection with the "Heartland Town Square" project the petitioner/plaintiff applied to the Sewer Agency for "conceptual certification" to connect the property and the Heartland Project to the Southwest Sewer District. At the Sewer Agency's December 20, 2004 meeting Resolution No. 46-2004 was adopted. This resolution granted "conceptual certification" to the proposed connection of the "Heartland Town Square" property to the Southwest Sewer District. The Town Board acted as lead agency pursuant to SEQRA and conducted a review that spanned over 11 years. The petitioner alleges that the 1992 "Long Island Comprehensive Special Groundwater Protection Area Plan" specifically call for the connection of the subject property to the Southwest Sewer District. The petitioner contends that throughout the multi year SEQRA review process the respondents "presumed that the Heartland project would discharge its wastewater flow by means of a connection to the Southwest Sewer District". Following the SEQRA review, and after holding a public hearing on April 16, 2015, the Town's Planning Board recommended approval of a change of zone with respect to Phase 1 of Development Unit 1A of the Heartland Project, hereinafter referred to as "Phase 1", on August 18, 2016. The Town Board then referred the Heartland Project to the Suffolk County Planning Commission, hereinafter referred to as "SCPC". The SCPC considered the project at meetings, and after hearing public comment, adopted a conditional approval of the project with conditions.

The Town Board then held a public hearing on the zoning aspects of the project and on July 18, 2017 overrode several of the SCPC's approval conditions, established the PSPRD in the Town, adopted zoning code provisions for the new district, reclassified 113 acres of the subject property into the new PSPRD constituting Phase 1, and approved Phase 1. Thereafter, on September 19, 2017 the petitioner submitted an application to the Sewer Agency for "formal approval" of connection of the subject property and the Heartland Project to the Southwest Sewer District. The Sewer Agency by Resolution No. 2-2018, on February 5, 2018, adopted the SEQRA findings, granted "formal approval" for the connection of the Heartland Project to the Southwest Sewer District, and allocated 2,500,000 GPD of capacity in the Southwest Sewer District's sewage treatment plant to the Heartland Project subject to certain conditions. The Resolution specifically states that it "shall become null and void, and of no further force or effect, without any further action by the Agency or notice to Heartland Town Square if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein (the Connection Agreement), in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto." To date no contract or agreement has been negotiated.

On May 15, 2018, a resolution designated as "Intro. Res. No. 1459-2018" was proposed in the Suffolk County Legislature, which would "authorize, direct and empower the 'Administrative Head' of the Southwest Sewer District 'to enter into contracts and agreements with the developer for Heartland Town Square upon such terms and conditions as he may deem necessary relating to connections to the District of lands in close proximity to' the Southwest Sewer District" was "laid on the table" by the

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County Legislature and referred to the County Legislature's Public Works, Transportation & Energy Committee, hereinafter referred to as "PWT&E". On September 24, 2018, a motion was made before PWT&E to discharge 1459-2018, without recommendation, from PWT&E for consideration and action by the full County Legislature. The motion was defeated by a vote of three committee members in favor and four opposed. The petitioner alleges that subsequent to that vote PWT&E "has not reviewed, reported on, or taken any further action" with respect to 1459-2018 and the County Legislature has not taken any further action either.

On January 24, 2019 the petitioner commenced this action to challenge the "assertion of jurisdiction and authority over the proposed connection of the Heartland Project and the subject property to the Southwest Sewer District by the County Legislature" and PWT&E.

Motion to Dismiss

In support of the motion to dismiss, the respondents argue that the petitioner did not timely commence the action, that documentary proof shows that the action must be dismissed, and that the petitioner has failed to state a cause of action upon which relief can be granted. The petitioner argues that the action was timely commenced by the filing of the petition on January 24, 2019 which was four months after the vote on September 24, 2018.

To succeed on a motion to dismiss pursuant to CPLR 3211(a) for failure to state a cause of action, the court must determine whether, accepting as true the factual averments of the petition and granting petitioner every favorable inference which may be drawn from the pleading, petitioner can succeed upon any reasonable view of the facts stated (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 754 NE2d 184, 729 NYS2d 425 [2001]; see also *Fowler, Rodriguez, Kingsmill, Flint, Gray & Chalos LLP v Island Prop., LLC*, 307 AD2d 953, 763 NYS2d 481 [2d Dept 2003], *Bartlett v Konner*, 228 AD2d 532, 644 NYS2d 550 [2d Dept 1996]). If the pleading states a cause of action and if, from its four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion for dismissal will fail (see *Wayne S. v County of Nassau Dept. of Social Services*, 83 AD2d 628, 441 NYS2d 536 [2d Dept 1981]). The documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the petitioner's claim (see *Estate of Menon v Menon*, 303 AD2d 622, 756 NYS2d 639 [2d Dept 2003], citing *Leon v Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511, *Roth v Goldman*, 254 AD2d 405, 406, 679 NYS2d 92).

In the context of a CPLR 3211 motion to dismiss, the Court must take the factual allegations of the petition as true, consider the affidavits submitted on the motion only for the limited purpose of determining whether the petitioner has stated a claim, and in the absence of proof that an alleged material fact is untrue or beyond significant dispute, the Court must not dismiss the petition (*Wall Street Assocs. v Brodsky*, 257 AD2d 526, 684 NYS2d 244 [1st Dept 1999], citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634-636). In making a determination whether the petition sets forth a cognizable claim, evidentiary material may be considered to "remedy

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defects in the complaint” (see *Dana v Shopping Time Corp.*, 76 AD3d 992, 908 NYS2d 114 [2d Dept 2010], quoting *Rovello v Orofino Realty Co.*, *supra* at 40 NY2d at 636).

CPLR § 304 (a) states

An action is commenced by filing a summons and complaint or summons with notice in accordance with rule twenty-one hundred two of this chapter. A special proceeding is commenced by filing a petition in accordance with rule twenty-one hundred two of this chapter.

Suffolk County Code Section 740-45 states: Connection by premises outside district.

A. The Administrator is hereby authorized and empowered to consider applications for connections to a County sewer district facility by businesses, industries and other users from outside the geographical boundaries of a district and to negotiate contracts and agreements with those businesses, industries and users as he deems appropriate upon such terms and conditions as to him may seem reasonable and proper to protect the best interests and to accrue to the financial benefit of the district, including but not limited to provisions intended to relieve a district of the full burden of maintenance and capital costs, present or future, if any, attributable to and that might result from such contractual connections, and including the filing of a surety bond or the deposit of cash or securities with the County Comptroller or the giving of every guaranty to the district to ensure the performance of said agreements and contracts, and the costs, if any, to a district relating thereto will be offset by payments from the owner and will not constitute an undue burden upon the property within said district, subject to the provisions of § 740-38 of this chapter and the charges imposed thereunder.

B. The Administrator, when considering applications for connection to a County sewer district facility by businesses, industries and other users from outside the geographical boundaries of a district, shall first make a determination that the connection is in the best interests of the residents of the district and the citizens of the County of Suffolk, and shall consider each of the following factors in making the determination:

- (1) The environmental impact of the proposed connection;
- (2) The tax impact of the proposed connection on the affected sewer district;
- (3) Whether the applicant can demonstrate that an economic benefit will accrue, either through an increase in jobs or an increase in tax revenue to the County, as a result of the sewer connection;
- (4) Whether there is adequate capacity within the affected sewer district to absorb the outside connection;

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(5) Whether the proposed application shall provide an economic benefit to the area; and

(6) If the proposed connection is for a residential development, whether the applicant has incorporated affordable housing units within the development...

D. Any contracts or agreements negotiated by the administrative head of any Suffolk County sewer district shall be subject to the final review, approval and ratification of the Suffolk County Legislature.

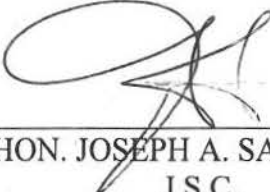
“The court was without power to control or direct the action of appellants as legislators.” (*Spano v Close*, 266 AD 1023, 1023 [2d Dept 1943]). “Generally speaking, an article 78 proceeding is not maintainable against a legislative body to test the validity of its legislative acts. Clearly, such a proceeding does not lie to review action which is legislative in nature or to compel a legislative body to enact particular legislation.” (*Goldstein v Rockefeller*, 45 Misc 2d 778, 780 [Sup Ct, Monroe County 1965], citing *Matter of Pelham Jewish Center v. Board of Trustees*, 9 Misc 2d 564, affd. 6 A D 2d 710; see, also, *Matter of Spano v. Close*, 266 App. Div. 1023; *Matter of Fisenne v. Bay Ridge Dist. Local Bd.*, 250 App. Div. 460; *Matter of Soule v. Town of Perinton*, 141 N. Y. S. 2d 167.).

In the present action the Suffolk County Code itself indicates that “Any contracts or agreements negotiated by the administrative head of any Suffolk County sewer district shall be subject to the final review, approval and ratification of the Suffolk County Legislature”. In addition, the respondents have shown that the causes of action, as against the Suffolk County Legislature and PWT&E, seek to test the validity of their legislative acts and are therefore not the appropriate subject of an article 78 proceeding.

The Court concludes that, accepting as true the factual averments of the petition and granting petitioner every favorable inference which may be drawn from the pleading, the petitioner has not pled a cause of action cognizable at law as against the respondents. Petitioner has failed to come forth with any information to counter the proof provided by the respondents that the language requiring Legislative approval for the contract or agreement to connect the Heartland Project to the Southwest Sewer District was within the jurisdiction or authority of the Legislature. Therefore the respondents’ motion to dismiss is granted in all respects.

The foregoing shall constitute the decision and Order of this Court.

Dated: October 17, 2019


HON. JOSEPH A. SANTORELLI
J.S.C.