

PJB Equities, Inc. v Village of Ossining

2019 NY Slip Op 35167(U)

May 8, 2019

Supreme Court, Westchester County

Docket Number: Index No. 66343/18

Judge: Anne E. Minihan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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PJB EQUITIES, INC., WOLDEN ROAD ASSOCIATES LLC, 56
SOUTH HIGHLAND AVE LLC, 40 SOUTH HIGHLAND AVE
LLC, MONTE KALFA CORP., 16-16 JAMES STREET LLC,
USA MARKETING GROUP, INC.

Petitioners,

DECISION & ORDER
Index No. 66343/18
Seq. 1, 2 & 3

-against-

THE VILLAGE OF OSSINING, THE BOARD OF TRUSTEES
OF THE VILLAGE OF OSSINING,

Respondents.

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MINIHAN, J.

By verified petition, alleging sixteen causes of action including Federal and New York State constitutional claims, PJB EQUITIES, INC., WOLDEN ROAD ASSOCIATES LLC, 56 SOUTH HIGHLAND AVE LLC, 40 SOUTH HIGHLAND AVE LLC, MONTE KALFA CORP., 16-16 JAMES STREET LLC, USA MARKETING GROUP, INC., petitioners, seek an order of this court pursuant to Article 78 of the CPLR annulling, vacating and setting aside the Resolution adopting the 1974 Emergency Tenant Protection Act ("ETPA") passed by the Village of Ossining on September 5, 2018 as well as an award of costs and disbursements.¹ NYSCEF documents 1-49 were read on this verified petition (seq #1); on the motion to dismiss pursuant to CPLR 3211 and 3212 filed by the Village of Ossining Respondents (seq. #2); and on the order to show cause pursuant to CPLR 7802 (d) permitting Community Voice Heard-Power, Legal Services of the Hudson Valley and the Hudson Valley Justice Center to appear as Amici Curiae (seq. #3).

Factual & Procedural History

Petitioners are landlords and/or owners of apartment buildings within the Village of Ossining challenging the resolution adopted on September 5, 2018 claiming that the Board of Trustees acted unlawfully and not in accordance with its customary practices of enacting local

¹The related proceeding *Audobon I, LLC v Village of Ossining, et al*, Index No. 68893/2018 was dismissed by decision and order dated April 29, 2019. Notably, in a decision and order dated December 24, 2018, this court, denied the request for an injunction in the related proceeding enjoining the Village respondents from enforcing rent stabilization in the Village of Ossining as determined by the resolution.

laws when it implemented rent stabilization in the Village of Ossining after a housing emergency was declared². Petitioners' apartment buildings lie within the Village and under the ETPA, are subject to rent controls, limitations on the rent, limitations on vacancy rents, among other things. Petitioners claim that as a result of ETPA they will not be able to recoup costs and cannot afford to make repairs, major maintenance and capital improvements and as a result, there will be deterioration among apartment buildings and a diminution of value of such real estate. Petitioners allege that the passage of the resolution violated a myriad of constitutional protections including a violation of the Fair Housing Act.

Upon the passage of a declaration of a housing emergency pursuant to McKinneys Unconsolidated Law § 8624, the Westchester County Rent Guidelines Board ("WRGB") is required to establish guideline rates of rental adjustments, if any, for new and renewal leases to be entered into pursuant to the ETPA. Pursuant to McKinneys Unconsolidated Law § 8623, DHCR has been designated as the sole administrative agency to administer the regulation of residential rents as provided by the ETPA whenever a municipality has determined the existence of such a local emergency. After this proceeding was commenced, the WRGB voted on November 13, 2018 to: prohibit rent increases in ETPA-impacted properties for one-year lease renewals (contracted between October 1, 2018 and September 30, 2019); limit rent increases to 1% for any two-year lease renewals in ETPA-impacted properties (between October 1, 2018 and September 30, 2019; and retroactively limit rent increases for the six-month period leading up to September 30, 2018 ETPA-impacted properties [to 4% for existing, multi-month leases, and 2% for existing month-to-month leases]).

Petitioners allege that the vacancy study conducted by Collective for Community Culture and Environment (CCCE) was defective and incomplete and that the implementation of ETPA will detrimentally impact rental properties. Petitioners argue that in 2017, the respondents commissioned a study of housing in the Village, and the Board of Trustees voted at that time to authorize the study, known as the Dwarka Study. The adoption of the ETPA was the last option in the Dwarka Study and according to petitioners, since the Board failed to rely on any one of the other viable more positive options, the Board's action of implementing ETPA was arbitrary and capricious and a violation of their constitutional protections. Petitioners contend that the adoption of ETPA was not on the September 5, 2018 agenda and that notice to the public was deficient not permitting the public a meaningful opportunity to voice concerns or challenge the implementation. So too, petitioners argue that since the text of the resolution was not publicly distributed before or during the vote, that is contrary to the Board's customary practice.

²On February 6, 2019, a public hearing was held permitting the public to comment on a proposed resolution terminating the housing emergency. The Board of Trustees passed a Resolution on February 26, 2019, limiting the housing units governed by the resolution enacted on September 5, 2018.

By motion to dismiss (NYSECF No. 16)(seq. #2), the Village respondents argue that the petition fails to state a cause of action and is contradicted by the certified record provided to the court and should be dismissed. By order to show cause pursuant to CPLR 7802 (d), a motion permitting Community Voice Heard-Power, Legal Services of the Hudson Valley and the Hudson Valley Justice Center to appear as Amici Curiae was filed. By affirmation in opposition, petitioners oppose the motion to dismiss and object to the intervention of Community Voice Heard-Power, Legal Services of the Hudson Valley and the Hudson Valley Justice Center to appear as amici curiae.

Analysis

The court grants the motion pursuant to CPLR 7802 (d) permitting Community Voice Heard-Power, Legal Services of the Hudson Valley and the Hudson Valley Justice Center to appear as amici curiae as it requires only a showing that the intervener is “an interested person,” and such decision lies in the sound discretion of the court (*White v Incorporated Village of Plandome Manor*, 190 AD2d 854 [2d Dept 1993], *leave to appeal denied* 83 NY2d 752 [1994]). Petitioners have failed to demonstrate prejudice, and since the standard for permissive intervention in an article 78 proceeding is more liberal than that of CPLR 1013, which applies to actions in general, intervention is granted herein (*see Elinor Homes Co. v St. Lawrence*, 113 AD2d 25, 28 [2d Dept 1985]).

By chapter 576 of the Laws of 1974, the New York State Legislature enacted the ETPA effective May 29, 1974, finding that a serious public emergency continued to exist in housing accommodations. The ETPA regulates landlord-tenant relationships involving limiting rents and imposes fees related to registration and reporting among other things (*see* McKin. Unconsol. Laws §§ 8624 -8632). The ETPA was renewed with amendments for a four-year period by Chapter 20, part A of the Laws of 2015 and it is a valid exercise of municipal authority (*see Farrell v Drew*, 19 NY2d 486 [1967]). The DHCR is the designated administrator of the ETPA for Westchester County. The ETPA provides that a declaration of emergency may be imposed for all or any class of housing (not otherwise statutorily exempt from coverage) pursuant to McKinneys Unconsolidated Law § 8625 where the supply of such rental housing (either within the municipality or within the covered class) has a vacancy rate of less than 5% (McK. Unconsol. Law § 8623 [a]). Upon such declaration, the rents for the subject properties are frozen at the rate paid immediately prior to the declaration subject to the offer of one or two year leases at rates of adjustment, if any, set by the rent guidelines board for that county (McK. Unconsol. Law § 8626 [a]). Essentially, after a housing emergency is declared, an owner is prohibited from collecting rent in excess of the initial legal regulated rent or the adjusted initial legal regulated rent until another legal rent is authorized pursuant to the guidelines.

A review of the certified record herein demonstrates that ETPA was considered by the Village for years, and that upon the authorization of the Board of Trustees, the Village of Ossining issued a Request for Proposals to conduct a vacancy study. The record demonstrates that the Village Clerk received two responses, one from Collective for Community, Culture and

Environment ("CCCE") on April 19, 2018, and a second from Lisa Sturtevant & Associates, LLC on April 20, 2018. According to the record, CCCE had experience in New York and was recognized as a regional consulting group that had worked with other states and large municipalities, making them the superior choice. On May 16, 2018, the Village hired CCCE to conduct the study. Despite the petitioners' contentions that the study relied on a faulty definition of the term "vacancy," the record demonstrates that the CCCE proposal recommended an owner-focused approach following the U.S. Bureau of Census definition for the term vacancy. The Board first determined that a public hearing would be held as reflected in the August 15, 2018 minutes. The Board convened on August 22, 2018 and set a public hearing date for September 5, 2018, as reflected by the August 22, 2018 minutes, on motion it was:

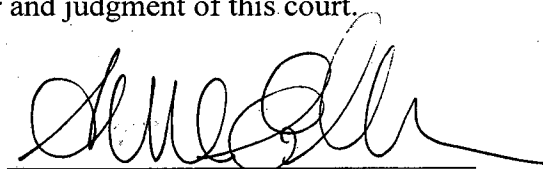
"RESOLVED, that the Board of Trustees of the Village of Ossining hereby calls for the opening of a Public Hearing to take place at the Birdsall Fagan Police/Court Facility, 86-88 Spring Street in Ossining on September 5, 2018 at 7:30 p.m., or as soon thereafter as the matter may be heard, to provide an opportunity for public comment as to whether the protections of the Emergency Tenant Protection Act should be applied to qualifying multi-family rental properties in the Village of Ossining; under consideration are multifamily rental properties of six or more units which were completed prior to January 1, 1974." (Exhibit A, Record 00102).

The Board received public feedback, between August 24-26, 2018, namely three emails weighing in on the ETPA. The study was published on the Village website and addressed at the August 29, 2018 work session. The setting of the public hearing complied with New York Home Rule Law, New York Village Law, the ETPA and the Village Code as public notice was published in the local newspaper, *The Gazette*, on August 23, 2018, as reflected in the newspaper's certification, and the September 5, 2018 minutes and resolution. Petitioners' contention that the study is not complete and actually exceeds five percent claiming that a housing emergency does not exist, is based on information and belief, and is refuted by the record particularly since the law requires that a municipality need not conduct a "complete survey" of all housing, and must ground its determination upon a common sense approach with "a good faith study" derived from "precise data" (*see Executive Towers at Lido, LLC v City of Long Beach*, 37 AD3d 650 [2d Dept 2007]). According to the record, the Pratt Institute Graduate Center for Planning assisted with the vacancy study that concluded of 64 buildings containing 1503 available housing units, an overall vacancy rate of 3.06%, which number is similar to the results of the prior study conducted by Community Housing Innovations in 2016 which found a 3.09% vacancy rate. Thus, the vacancy rate meets the statutory requirements to declare a housing emergency as it is less than the ETPA baseline of 5% (*see* McK. Uncons. Law § 8623[a] [ETPA § 3[a]; *cf* *Garden v Board of Trustees of inc. Village of Roslyn*, 190 AD2d 722 [2d Dept 1993]). As such, petitioners have failed on this record to demonstrate that the actions of the Board of Trustees were unlawful, arbitrary or capricious (*see Executive Towers at Lido, LLC v City of Long Beach*, 37 AD3d 650 [2d Dept 2007]; *see also Kaplan v Town of Haverstraw*, 126 AD2d 606 [2d Dept 1987]).

Based on the foregoing, it is not necessary to reach petitioners' constitutional claims. Accordingly, it is ORDERED that the motion pursuant to CPLR 7802(d) permitting Community Voice Heard-Power, Legal Services of the Hudson Valley and the Hudson Valley Justice Center to appear as amici curiae is granted; the respondents' motion to dismiss is granted and the petition is dismissed.

The foregoing constitutes the decision, order and judgment of this court.

Dated: White Plains, New York
May 8, 2019



Hon. Anne E. Minihan, A.J.S.C.

TO: NYSCEF