

Sea Gate Assn. v Yusupov

2020 NY Slip Op 30761(U)

March 3, 2020

Supreme Court, Kings County

Docket Number: 510089/2019

Judge: Loren Baily-Schiffman

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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 3rd day of March, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

THE SEA GATE ASSOCIATION,
Plaintiff,
- against -
EDWARD YUSUPOV,
Defendant.

Index No.:510089/2019

Motion Seq. # 2

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Cross-Motion, Affidavit, Affirmation and Exhibits	1
Affirmation in Opposition to Cross-Motion	2
Defendant's Reply Affidavit, Affidavit and Exhibits	3

Upon the foregoing papers Defendant, Edward Yususpov ("Defendant"), moves this Court for an Order: (1) dismissing Plaintiff, the Sea Gate Association's ("Plaintiff"), Complaint for failure to exhaust administrative remedies; or in the alternative (2) granting Defendant a declaratory judgment that Defendant enjoys an easement on the street abutting his property; (3) awarding Defendant compensatory and punitive damages against Plaintiff in the sum of \$500,000; (4) ordering a framed issue hearing pursuant to CPLR 4317(b) to determine the extent of damages to which Defendant is entitled; (5) awarding Defendant his attorneys' fees and costs; and (6) for such other further relief as the Court deems equitable and just.

Background

Plaintiff is a New York State non-profit corporation which acts as a homeowner's association for Sea Gate, a gated community in Brooklyn, NY. It is undisputed that Plaintiff owns and maintains the public areas of Sea Gate, including the streets. Defendant is the owner of 3805 Beach 38th Street in Brooklyn, NY ("the subject property"), a private residence in Sea Gate.

This case involves a dispute as to acceptable use of Beach 38th Street. Defendant purchased the subject property and is attempting to build a two-family house on it. Defendant has a permit from NYC DOB which allows the construction of curb cutouts from Beach 38th Street to build a driveway to the subject property. Additionally, Defendant has a Builders Pavement Plan from the New York City Department of Transportation, which allows Defendant to repave the sidewalk of Beach 38th Street and includes a driveway and curb cutout to the subject property. Plaintiff brings this action for a declaratory judgment that "YUSUPOV has no right to utilize the Beach 38 [S]treet Block in any manner not available to all other SGA property Owners," "YUSUPOV has no right to utilize the Beach 38 street Block for vehicular traffic," and "YUSUPOV has no right to utilize the Beach 38 street Block in any manner not specifically authorized by SGA." Plaintiff's Complaint includes five other causes of action all of which regard Beach 38th Street. Additionally, plaintiff claims that allowing the Defendant to use Beach 38th Street and build a curb cutout from it, constitutes taking the property from Plaintiff (See Affirmation in Opposition p. 8). Defendant maintains that he possesses an easement appurtenant which allows use of Beach 38th Street for ingress and egress to the subject property. Plaintiff erected a fence which blocks all of Beach 38th Street and which Defendant maintains limits Defendant's rights to the street.

By Order dated January 9, 2020, this Court permitted Defendant to use Beach 38th Street to complete the construction of the subject property and permitted Defendant to access the subject property by foot or vehicle. The January 9, 2020 Order vacated a TRO put in place by Hon. Toussaint and ordered the removal of a fence blocking Beach 38th Street. On January 21, 2020, Plaintiff moved – by Order to Show Cause – to renew, reargue and clarify this Court’s January 9, 2020 Order. This Court declined to sign the January 21, 2020 Order to Show Cause and Defendant brought this cross-motion.

Discussion

Whoever “objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law.” *Brunjes v. Nocella*, 40 A.D.3d 1088, 1088-1089 (2d Dep’t 2007), *internal quotations omitted*. The exhaustion rule is subject to certain exceptions, including “when an agency’s action is challenged as either unconstitutional or wholly beyond its grant of power.” *Watergate II Apartments v. Buffalo Sewer Authority*, 46 N.Y.2d 52, 57 (1978). The Department of Buildings is responsible for approving the Building Pavement Plan but will not do so without compliance with Department of Transportation rules. See Architect Affidavit in Response to Plaintiff’s Reply. Here, the Department of Buildings approved a plan which permitted Defendant to construct a driveway and curb cutout from Beach 38th Street to the subject property. In so doing, the Department of Buildings impliedly allowed Defendant’s vehicular use of Beach 38th Street.

In the instant case, Plaintiff failed to exhaust administrative remedies by appealing the determination of the Department of Buildings to the Board of Standards and Appeals. See, N.Y. City Charter § 645. Additionally, Plaintiff does not allege any exception to the exhaustion rule

which would warrant circumventing the administrative appeal process. The parties' remaining contentions need no be reached in light of the Court's determination. Accordingly, it is HEREBY:

ORDERED that the cross-motion is GRANTED, dismissing the Complaint.

This is the Decision and Order of the Court.

ENTER,



LOREN BAILY-SCHIFFMAN
JSC

HON. LOREN BAILY-SCHIFFMAN

KINGS COUNTY CLERK
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