County of Suffolk v Ringhoff Family L.L.C. #1
2020 NY Slip Op 31874(U)
June 9, 2020
Supreme Court, Suffolk County
Docket Number: 36801-12
Judge: Denise F. Molia
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Index No.: 36801-12

SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:
Hon. **DENISE F. MOLIA,**
Justice

COUNTY OF SUFFOLK,

Plaintiff,

- against -

RINGHOFF FAMILY LIMITED LIABILITY COMPANY #1, CATHERINE C. RINGHOFF, WILLIAM J. RINGHOFF, LOUIS RINGHOFF, COPART OF CONNECTICUT, INC., and ACR SERVICES, INC.,

Defendants.

CASE DISPOSED: YES
MOTION R/D: 2/24/17
SUBMISSION DATE: 12/15/19
MOTION SEQUENCE NO.: 002 MG

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Upon the following papers filed and considered relative to this matter:

Notice of Motion dated February 3, 2017; Affirmation in Support dated February 3, 2017; Exhibits A through I annexed thereto; Affirmation in Support dated February 15, 2017; Affirmation in Support dated March 16, 2017; Exhibit 1 annexed thereto; Affirmation in Opposition dated March 31, 2017; Affidavit in Opposition dated March 30, 2017; Exhibits A through M annexed thereto; Reply Affirmation dated April 24, 2017; Exhibit J annexed thereto; Reply Affirmation dated May 1, 2017; Defendant's Memorandum of Law in Support of Motion; Plaintiff's Memorandum of Law in Opposition to Motion; Defendant's Reply Memorandum of Law in Further Support of Motion ; and upon due deliberation; it is

ORDERED, that the motion by defendant Copart of Connecticut, Inc., and joined by each of the remaining defendants, Ringhoff Family Limited Liability Company #1, Catherine C. Ringhoff, William J. Ringhoff, Louis Ringhoff, and ACR Services, Inc., pursuant to CPLR 3212, for an Order directing the entry of summary judgment in favor of all defendants and dismissing the Amended Verified Complaint against all defendants, is granted.

The Amended Complaint asserts thirteen causes of action arising out of the placement of storm damaged motor vehicles on protected farmland after Hurricane Sandy in November 2012. The First and Second Causes of Action sounding in breach of contract and breach of deed covenants were brought against the defendans Ringhoff Family Limited Liability Company #1,

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Catherine C. Ringhoff, William J. Ringhoff, and Louis Ringhoff ("Ringhoff defendants"). The remaining claims as set forth in the Third through Thirteenth Causes of Action were brought against all defendants.

The County of Suffolk ("County") adopted and implemented a program known as the "Purchase of Development Rights Program," by which the County may purchase the development rights to certain properties used for agricultural production, as established and outlined in Suffolk County Code Chapter 8 entitled "Development of Agricultural Land." In furtherance of this policy, the County purchased and acquired the development rights in connection with farmland owned by the Ringhoff defendants and designated by Suffolk County Tax Map Number 0200-512.0001.00-017.000 and 018.000). The County paid the sum of $1,685,300.00 to Ringhoff LLC for such development rights on or about June 21, 2012 when a Deed of Developmental Rights was executed.

In accordance with the express covenants set forth in the deed, Ringhoff LLC covenants and agrees:

> "that it will not remove any soil from the premises described herein. A purpose of this acquisition is to protect topsoil by limiting non-agricultural production uses of the land. The topsoil present on the premises consists of prime/unique/important soil. This representation is intended to serve as a covenant running with the land in perpetuity and provisions of this paragraph will survive delivery of any such instrument of conveyance." Deed at p. 2.

Ringhoff LLC further covenants in the deed that it "will (a) not generate, store or dispose of hazardous substances on the premises, nor allow others to do so [and] (b) comply with all Environmental Laws . . ." Deed at p. 2.

Suffolk County Code Chapter 8, §8-13, is incorporated by reference in both the contract of sale and deed, and expressly prohibits the following, in pertinent part:

> "A. Nonagricultural use. No person shall use agricultural lands for any purpose other than agricultural production, except as provided in this chapter.
>
> C. Dumping. There shall be no dumping on agricultural lands.
>
> E. Solid waste. No solid waste shall be burned or stored on agricultural lands.
>
> F. Hazardous waste. No hazardous waste shall be stored on agricultural lands.
>
> H. Vehicles. No vehicles, including all-terrain vehicles, shall be used or stored on agricultural lands except in aiding agricultural production or for law enforcement, fire, emergency or military purposes.
>
> L. Driveways, roadways, thoroughfares. No person shall use any driveway, roadway, path or thoroughfare on agricultural land for vehicular access to an adjacent parcel for any purpose other than agricultural production.

> M. Parking areas. Asphalt, concrete and all other impermeable parking areas shall be prohibited on agricultural lands.
>
> O. Site disturbances. No person shall conduct a site disturbance, including, but not limited to, dredging, excavation, filling, grading and/or soil removal, on agricultural land without a special use permit.
>
> Q. Contracts. No person shall violate the terms and conditions of the contract of sale, as may be amended, and the deed of development rights, as may be amended.
>
> R. Any nonagricultural activity not explicitly permitted by this chapter shall be prohibited."

It is undisputed that between October 28, 2012 and October 31, 2012, Superstorm/Hurricane Sandy ("Sandy") struck this area with devastating effect, including high winds, flooding, power outages, fires, destroyed infrastructure, general and extensive property damage, personal injuries and death. In Sandy's wake, an estimated two hundred fifty thousand storm-damaged motor vehicles were left inoperable, abandoned and strewn throughout the affected region.

On or about October 27, 2012, President Barack Obama, through the Federal Emergency Management Agency ("FEMA"), issued Disaster Resolution 4085 (DR-4085) and then, on October 30, 2012, after the storm struck this area, declared New York and New Jersey as "Major Disaster Areas". On or about October 26, 2012, New York Governor Andrew Cuomo, in anticipation of the storm, issued Executive Order Number 47 declaring a disaster emergency in all sixty-two counties of New York State and directed various state agencies, the American Red Cross, local governments and individuals to assist in the recovery from Superstorm Sandy. On November 6, 2012, Governor Cuomo issued Executive Order Number 63, mandating the removal of all debris causing a public nuisance in regions affected by Sandy. Said Executive Order provided, in pertinent part:

> "WHEREAS, the flooding and storm surge caused by Hurricane Sandy created significant debris in and around the federally declared counties of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk and Westchester, and this debris has caused conditions that continue to pose a persistent threat to the security, life and health of persons in those areas . . .
>
> NOW, THEREFORE, I, ANDREW M. CUOMO . . . declare the conditions caused by Hurricane Sandy to be public nuisances and order relevant locaal officials to remove the debris forthwith."

On or about October 27, 2012, Suffolk County Executive Steve Bellone declared a State of Emergency for Suffolk County, with the Town of Brookhaven Acting Supervisor Kathleen Walsh declaring a State of Emergency in the Town of Brookhaven, the location of the Ringhoff farm.

While Chapter 8 of the Suffolk County Code does not provide a definition for the term "emergency", the Merriam Webster Dictionary defines "emergency" as "an unforseen combination of circumstances of the resulting state that calls for immediate action" or "an urgent need for assistance or relief." ("Emergency", [Def. 1 and Def. 2] *Merriam-Webster,* Retrieved December 2, 2016 from http://www.merriam-webster.com/dictionary/emergency). One would be hard pressed to dispute that the event known as Superstorm Sandy, which was the subject of

various states of emergency declared by the federal, state, county and town governments, was anything less than a devastating occurrence which met the accepted and understood definition of an emergency.

Shortly after the storm, defendant Copart of Connecticut, Inc. ("Copart"), on behalf of insurance carriers and their insureds, began to retrieve, organize, and dispose of vehicles damaged by the storm. Due to the extraordinary volume of damaged vehicles, Copart's already existing regional facilities were almost filled to capacity, requiring them to locate and lease emergency vehicle storage areas for the aforesaid vehicles. To assist in its efforts to continue the storm cleanup, process insurance claims, and permanently dispose of damaged vehicles for the benefit of insureds, Copart arranged to temporarily store storm damaged vehicles at various locations, including on the subject property known as the Ringhoff Farm in Eastport, New York.

It appears that defendant Ringhoff Family Limited Liability Company #1 ("Ringhoff") entered into a Lease agreement with ACR Services, Inc. ("ACR"), pursuant to which Ringhoff agreed to lease eighty (80) acres of the Ringhoff Farm property to ACR to use for "Temporary emergency storage and/or auction of used and/or insurance-damaged motor vehicles and related items, and any other legally permissible use." The lease provided that ACR would pay Ringhoff rent in the amount of $1,500.00 per month per acre for an initial term of six months commencing on November 26, 2012, with an option at the tenant's discretion to extend the term for up to an additional eighteen months.

The plaintiff has alleged that defendants ACR and Copart were in negotiations for an agreement whereby Copart would sublet the eighty acres being leased by Ringhoff to ACR to use for "Temporary storage and auction of used and insurance-damaged vehicles and related items, and any other legally permissible use." The plaintiff has submitted as an exhibit to its affirmation in opposition a document purporting to be the aforementioned agreement between ACR and Copart. It is noted that the submitted document is undated and unsigned. Plaintiff has failed to submit evidence to establish the existence of an enforceable agreement between ACR and Copart. Ultimately, it appears that no money changed hands pursuant to the aforesaid agreements and that none of the defendants actually received payment or profit from the use of the Ringhoff Farm as temporary storage for the Sandy damaged vehicles.

On or about November 28, 2012, the County's Director of Planning instructed Lauretta R. Fischer, Chief Environmental Analyst with the Suffolk County Planning Department, to inspect the Ringhoff property based upon a communication from Peter Scully of the New York State Department of Environmental Conservation ("DEC") advising that storm damaged vehicles were being placed and stored on the subject property. Although initially denied access to the subject property on November 28, 2012, site inspections of the property were thereafter conducted on December 5, 2012 and January 9, 2013.

On December 5, 2012, Fischer and an associate entered onto the subject site. Traversing along a newly developed gravel/dirt road along the easterly side of the property to the northeast corner of the property, Fischer observed that a fence had been erected that ran the remaining length of the dirt road, almost to the northern end of the property boundary. At the beginning of the fenced area, Fischer observed a berm that ran east/west the width of the farm field. Fischer further observed that the northern quarter of the farm field housed what appeared to be rows of storm damaged vehicles. She estimated that there were approximately between 800 and 1000 vehicles stored on the property, with the word "Copart" scrawled across the windshield of some of the vehicles.

Based on her observations of the subject site and her understanding of the Purchase of Development Rights Program, Fischer concluded that the defendants were in violation of the deed, the contract with the County, and Chapter 8 of the Suffolk County Code. Specifically,

Fischer contends that the placement and storage of storm damaged vehicles at the Ringhoff Farm posed a grave and imminent harm to the prime agricultural soils that exist on the site, and was in direct contravention to the intent and purpose of the County's Farmland Program, which is meant to conserve and protect viable farmlands and to encourage the improvement of such lands both for the production of food and for the preservation of such lands as valued natural and ecological resources. The matter was thereafter referred to the Suffolk County Attorney and the instant action was commenced.

The Amended Complaint asserts thirteen (13) causes of action arising out of the alleged unlawful placement of storm damaged vehicles on protected farmland. In addition to seeking damages in excess of One Million Dollars, the County seeks to enjoin the defendants from using the subject premises for nonagricultural purposes and activities, or from violating the covenants of the Deed of Development Rights and/or Suffolk County Law. The Complaint further alleges that the defendants erected illegal structures, including a road, fences, and parking areas in preparation for the placement and processing of storm damages vehicles.

The County of Suffolk contends that the Ringhoff defendants breached the contract and deed resulting from the County's purchase of the subject property, and stood in violation of Suffolk County Code Chapter 8, because they stood to profit from the storage of vehicles on their property in the aftermath of Superstorm Sandy.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853; see also CPLR 3212(b). Once the moving party establishes that entitlement, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." Alvarez v. Prospect Hospital, 68 N.Y.2d 320, 324. "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a motion for summary judgment. Zuckerman v. City of New York, 49 N.Y.2d 557, 562. Where no triable issues of fact exist and a party is entitled to judgment as a matter of law, a court should grant summary judgment (see, Weingarten v. Windsor Owners Corp., 5 A.D.3d 674. Based on the facts and circumstances as set forth and discussed hereinbelow, the defendants have demonstrated their entitlement to summary judgment. The plaintiff has failed to identify any factual issues yet to be resolved that would preclude the entry of summary judgment at this juncture.

The Seventh Cause of Action serves as the core of the County's Complaint, alleging that the defendants violated Suffolk County Code §8-13(H) (now identified in §8-14) through the storage of vehicles on agricultural lands in the aftermath of Superstorm Sandy. Said statute, entitled "vehicles", reads:

> "No vehicles, including all-terrain vehicles, shall be used or stored on agricultural lands except in aiding agricultural production or for law enforcement, fire, emergency or military purposes."

The defendants maintain that the temporary storage of Sandy damaged motor vehicles on the Ringhoff Farm constituted the removal of public nuisances during an emergency situation in furtherance of Governor Cuomo's Executive Order Number 63, and that the subject activity was legally permitted by §8-13(H) of the Suffolk County Code. In support of their position, the defendants state that Janet Gremli, the County's Associate Public Health Sanitarian, who was responsible for inspecting the Ringhoff Farm in Sandy's aftermath, testified at her deposition that County Code §8-13(H) specifically provided an exception for the storage of vehicles on farmland for an emergency purpose.

The plaintiff contends that the term "emergency" in that statute refers only to an emergency situation occurring only on the subject farmland property, and not a general emergency affecting any persons or property located beyond the boundaries of the subject parcel. The plaintiff has not provided any documentary or testimonial evidence from the time of the enactment of such statute so as to support the claim that the term "emergency" was meant to be limited in scope from its more expansive definition as generally accepted and understood by society. Fischer has opined, without any supporting documentary evidence, that it is her understanding that a Section 8-13(H) emergency relates only to situations such as a fire or flood on the subject premises only, which event would require the response of emergency and other vehicles. Under this interpretation, firefighters responding to an alarm for a fire raging in the area of , but not actually on the subject property, would be prohibited from temporarily storing fire fighting trucks or equipment on the Ringhoff Farm, even if such storage could extinguish the off-property conflagration. Such a situation would appear at odds with the governmental purpose of protecting lives and property.

Here, the Court finds the term "emergency" in the context of the subject statute to be broad enough to include the storage of the subject vehicles on the Ringhoff property resulting from the well-known and undisputed regional emergency circumstances presented by Sandy. As such, the storage of such vehicles falls within the exceptions permitted by Section 8-13(H) of the Suffolk County Code and the Seventh Cause of Accident is dismissed as against all defendants. Further, the Third, Fourth, Twelfth and Thirteenth Causes of Action are also dismissed as against all defendants, inasmuch as they arise from the same set of facts as alleged in the Seventh Cause of Action, and fail to allege damages distinct from the Seventh Cause of Action.

The Tenth cause of action alleges that a "parking area" was constructed by the defendants on the Ringhoff Farm. Suffolk County Code §8-13(N) defines a "parking area" as "[a]sphalt, concrete and all other impermeable parking areas". By the plaintiff's own admission through the deposition testimony of Fischer, the vehicles that were temporarily stored on the subject property were placed on mud - a permeable, natural surface. In the absence of any evidence that a parking lot or impermeable surface was constructed on the site, the Tenth Cause of Action is dismissed as against all defendants.

The Complaint's Fifth Cause of Action alleges a violation of Suffolk County Code §8-13(E) through the storage of "solid waste" on the subject property. Solid waste is defined by such section as follows:

> "Any unwanted and/or discarded material from agricultural, commercial, industrial, institutional, mining and/or residential sources, including, but not limited to, durable goods, nondurable goods, yard trimmings, stones, rubble, construction and demolition debris, garbage, rubbish, litter, ash or other substance described as solid waste in Title 6 of the New York Codes, Rules and Regulations, Part 360, as may be amended. Materials used as livestock bedding or as fertilizer supplements and/or soil conditioners or used in other manners pursuant to standard agricultural practices shall not be deemed solid waste."

The subject vehicles were removed from their various off-site locations as a result of the storm damage and pursuant to governmental decree; not because they had otherwise been discarded or unwanted. There is no testimony to demonstrate that the subject vehicles were classified as, or generated solid waste. The subject vehicles were removed from the Ringhoff Farm site during the early stages of this litigation. Prior to any action to comply with the County's demands to remove, it became necessary for the defendants to first obtain permission from the State of New York, owner of the adjacent roadway, to utilize said roadway for egress from the Farm property. There is no testimony to dispute that the storage of these Sandy damaged

vehicles was to be temporary and only until relocation to another location pending resolution of insurance claims. Since the vehicles were storm damaged and not shown to be unwanted or discarded, and were only temporarily stored on the Ringhoff Farm during the period of emergency, and inasmuch as there is no evidence that solid waste was found at the subject site in violation of the County Code, the Fifth Cause of Action is dismissed is dismissed as against all defendants.

The Sixth Cause of Action alleges that the defendants stored "hazardous waste" on the site in violation of Suffolk County Code §8-13(F). This claim is belied by the testimony of the County's witness Janet Gremli, Suffolk County Associate Public Health Sanitarian, at her deposition, when she testified that following inspections and soil testing of the property, there was no soil contamination, solid waste or hazardous waste found at the property and that the only compounds found were consistent with the farming industry. The Sixth Cause of Action is therefore dismissed as against all defendants.

The plaintiff, in the Ninth Cause of Action, alleges that the defendants violated Suffolk County Code §8-13(L) by using "any driveway, roadway, path or thoroughfare on agricultural land for vehicular access to an adjacent parcel for any purpose other than agricultural production." Under the circumstances presented, in which the defendants were attempting to comply with the demands of the plaintiff, it would defy logic to permit the temporary storage of vehicles in an established emergency situation, but to prohibit the use of an existing or temporary roadway to access the parcel of property to which such vehicles are being removed. The Ninth Cause of Action is dismissed as against all defendants.

The Eighth Cause of Action alleging that the defendants installed fencing on the Ringhoff Farm without first having obtained an agricultural permit is contradicted by the documentary evidence. It appears that prior to the County's purchase of the development rights from the Ringhoff's in 2012, a survey of the property was commissioned by, and certified to the County of Suffolk. The survey, which was prepared months prior to the destruction caused by Superstorm Sandy, indicated that the subject property was significantly fenced either by chain link or by an eight foot deer fence. The disclosure in this matter has not disputed the foregoing or provided any evidence to support a claim that Copart or any other defendant installed the fencing that is the subject of this claim. The Eight Cause of Action is dismissed as against all defendants.

The County's general claim that the defendants engaged in a site disturbance in violation of Suffolk County Code §8-13(O), was amplified in the Bill of Particulars wherein the County alleged that the defendants constructed "an illegal roadway and parking area for access to and storage of hundreds of damaged vehicles and the contents and parts thereof." As previously determined by the Court, the disputed roadway on the Ringhoff Farm was permeable and used for the temporary storage of vehicles during an emergency. No improvements were made to the roadway or the lot where the vehicles were placed and no parking areas have been found to be created on the subject site. Rather, any alleged disturbance of soil or roadway occurred on the property owned by New York State and not on Ringhoff Farm property. The Eleventh Cause of Action is thereby dismissed as against all defendants.

In the First Cause of Action, it is asserted that the Ringhoff defendants breached the Contract of Sale of Development Rights that they had entered into with the County, by utilizing the property for purposes other than agricultural in violation of said contract as well as Chapter 8 of the Suffolk County Code. The plaintiff further alleges that the Ringhoff defendants, *inter alia*, removed soil from the property and generated, stored, and/or disposed of hazardous substances on the premises. The Second Cause of Action alleges that the Ringhoff defendants breached the covenants as set forth in the Deed for Developmental Rights. The basis of these allegations arise from the same set of circumstances already discussed and related to the eleven causes of action previously dismissed against all defendants under the "emergency" exemption provided in the

applicable statute. For the same reasons as cited above, the First and Second Causes of Action are dismissed as against the Ringhoff defendants.

ORDERED, that the cross-claim of defendant Copart of Connecticut, Inc., as asserted against defendant ADR Services Inc., is dismissed.

The foregoing constitutes the Order of this Court.

Dated: June 9, 2020

Hon Denise F. Molia

HON. DENISE F. MOLIA A.J.S.C.