

Ballato v Suffolk County Traffic & Parking Violations Agency
2020 NY Slip Op 34509(U)
May 1, 2020
Supreme Court, Suffolk County
Docket Number: 623067/2017
Judge: Joseph Farneti
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SHORT FORM ORDER

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY**

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

ANTHONY BALLATO, MARINA CUTINO-
BUCKLEY, GARY GATTI, RENEE LAMB and
BRANDON LEE,

Plaintiffs,

-against-

THE SUFFOLK COUNTY TRAFFIC AND
PARKING VIOLATIONS AGENCY and THE
COUNTY OF SUFFOLK,

Defendants.

ORIG. RETURN DATE: 3/27/18
FINAL SUBMISSION DATE: 8/16/18
MTN. SEQ. #: 001
MOTION: MD

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Upon the following papers numbered 1 to 5 read on this motion to dismiss
plaintiffs' complaint. Notice of Motion/Order to Show Cause and
supporting papers 1-3; Affirmation in Opposition and supporting papers 4; Replying
Affidavits and supporting papers 5; Other _____; it is,

ORDERED that this motion by defendants THE SUFFOLK COUNTY
TRAFFIC AND PARKING VIOLATIONS AGENCY and THE COUNTY OF
SUFFOLK for an Order: (1) pursuant to CPLR 3211 (a) (7), dismissing plaintiffs'
Complaint in its entirety based on their failure to state a cause of action, as the
defendants' imposition of administrative fees, under Section 818-78 of the Suffolk
County Code, is allegedly authorized under State law and County law and is,
therefore, constitutional, as a matter of law; (2) pursuant to CPLR 7804 (f),
dismissing the Complaint as same has not been properly brought under Article
78; and (3) granting Declaratory Judgment in favor of defendants, pursuant to

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CPLR 3001, is hereby **DENIED** in its entirety. The Court has received opposition to this motion from plaintiffs ANTHONY BALLATO, MARINA CUTINO-BUCKLEY, GARY GATTI, RENEE LAMB and BRANDON LEE (collectively "plaintiffs").

Plaintiffs commenced this action in Supreme Court by way of a Summons and Complaint dated October 15, 2017, after having either pled guilty to or having been found guilty of a traffic offense at the Suffolk County Traffic and Parking Violations Agency and thereafter having been charged various late fees and administrative fees due to circumstances set forth in their petition. Plaintiffs' complaint seeks a declaratory judgment, pursuant to CPLR 3001, against defendants THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY and THE COUNTY OF SUFFOLK (hereinafter "defendants" or "the County"):

(1) declaring Suffolk County Code Section 818-78 (A) (2) imposing administrative fees for traffic and parking tickets as illegal, null and void;

(2) declaring Suffolk County Code Section 818-78 (A) (3) imposing late fees for parking tickets as illegal, null and void;

(3) declaring Suffolk County Code Section 818-78 (A) (4) imposing administrative fees for judgments as illegal, null and void;

(4) declaring Suffolk County Code Section 818-78 (A) (5) imposing administrative fees for defaults as illegal, null and void;

(5) declaring Suffolk County Code Section 818-78 (A) (6) imposing a fee for failing to timely pay a fine as illegal, null and void;

(6) enjoining the defendants from imposing administrative fees pursuant to Suffolk County Code Section 818-78 (A) (2);

(7) enjoining the defendants from imposing late fees for parking tickets, doubling and tripling late paid fines pursuant to Suffolk County Code Section 818-78 (A) (3);

(8) enjoining the defendants from imposing administrative fees for judgments pursuant to Suffolk County Code Section 818-78 (A) (4); and

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(9) enjoining the defendants from imposing fees for failing to timely pay a fine pursuant to Suffolk County Code Section 818-78 (A) (6).

The County now moves pursuant to CPLR 3211 (a) (7), 7804 (f) and 3001, for an Order dismissing the complaint against it arguing that plaintiffs have failed to state a cause of action and that the complaint has not been properly brought under Article 78, and seeking a Declaratory Judgment in favor of the County.

Plaintiffs oppose the motion, arguing that Sections 818-78 (A) (2), 818-78 (A) (3), 818-78 (A) (4), 818-78 (A) (5), and 818-78 (A) (6) of the Suffolk County Code are unconstitutional in that they violate General Municipal Law §§ 372 and 11 (1) (e), by establishing penalties and fines outside those permitted by law and by enacting a local law which applies to and affects the courts; are impliedly pre-empted by Article 45 of the Vehicle and Traffic Law; and are expressly pre-empted by Article 1600 of the Vehicle and Traffic Law. Plaintiffs further argue that the provisions of Suffolk County Code Section 818-78 (A) (3) violate the usury provisions of General Obligations Law § 5-501 and Penal Law § 190.40. In addition, plaintiffs note that the County does not move to dismiss the Ninth, Tenth and Nineteenth causes of action contained in its complaint, nor does the County dispute the underlying facts alleged in the complaint. Moreover, plaintiffs assert that it couched its complaint in the language of an Article 78 proceeding in order to preserve their rights should it be determined that the defendant SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY was determined to be a true agency, and not a court-like entity.

The County, in response to plaintiffs' opposition, again argues for dismissal for failing to state a cause of action, and further argues that since plaintiffs failed to respond to its argument that the complaint should be dismissed insofar as it seeks relief pursuant to Article 78, it should be dismissed since it was not properly brought under Article 78.

When a party moves under CPLR 3211 (a) (7) for dismissal based on the failure to state a cause of action, the test is whether the pleading states a cause of action, not whether the plaintiff has a cause of action (*Sokol v Leader*, 74 AD3d 1180, 1180-1181, 904 NYS2d 153 [2d Dept 2010]). A court must determine whether, accepting the facts as alleged in the pleading as true and according the plaintiff the benefit of every favorable inference, those facts fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88, 614

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NYS2d 972 [1994]). If from the four corners of the complaint factual allegations are discerned which taken together manifest any cause of action cognizable at law, the motion will fail, regardless of whether the plaintiff will ultimately prevail on the merits (see *Danna v Malco Realty, Inc.*, 51 AD3d 621, 857 NYS2d 688 [2d Dept 2008]; *Bovino v Village of Wappingers Falls*, 215 AD2d 619, 628 NYS2d 508 [2d Dept 1995]).

In reviewing plaintiffs' complaint, it is clear that the County has failed to meet its burden of establishing that plaintiffs failed to state a cause of action for a declaratory judgment in its pleadings. The remedy of a declaratory judgment is appropriate "in cases where a constitutional question is involved or the legality or meaning of a statute is in question and no question of fact is involved" (*Dun & Bradstreet, Inc. v City of New York*, 276 NY 198, 206, 11 NE2d 728 [1937]). However, a "motion to dismiss a declaratory judgment action prior to the service of an answer presents for consideration only the issue of whether the cause of action for declaratory relief is set forth, not the question of whether the plaintiff is entitled to a favorable declaration" (*Matter of Tilcon N.Y., Inc. v Town of Poughkeepsie*, 87 AD 3d 1148, 1150, 930 NYS2d 34 [2d Dept 2011], quoting *Staver Co. v Skrobisch*, 144 AD2d 449, 450, 533 NYS2d 967 [2d Dept 1988]).

The Appellate Division, Second Department in a case of similar impression against Nassau County and its Traffic and Parking Violations Bureau, recently decided that the county's motion to dismiss and for a Declaratory Judgment in its favor was impermissible. As in that case, here, "the County failed to demonstrate the absence of all factual issues so that a determination as to the rights of the parties could be determined as a matter of law" (see *Guthart v Nassau County*, 178 AD3d 777, 779, 111 NYS3d 886 [2d Dept 2019]; *DiGiorgio v 1109-1113 Manhattan Ave. Partners, LLC.*, 102 AD3d at 730, 958 NYS2d 417 [2d Dept 2013]).

Accordingly, this motion by defendants to dismiss plaintiffs' complaint pursuant to CPLR 3211 (a) (7) and 7804 (f), and for a Declaratory Judgment in defendants' favor pursuant to CPLR 3001, is **DENIED** in its entirety.

The foregoing constitutes the decision and Order of the Court.

Dated: May 1, 2020



HON. JOSEPH FARNETI
Acting Justice Supreme Court

____ FINAL DISPOSITION

X NON-FINAL DISPOSITION