STATE OF NEW YORK

SUPREME COURT COUNTY OF ESSEX

RICHARD J. DOYLE, STEPHANIE DOYLE and DANIEL BRUNO, as Trustee of the Ruth E. Bruno Irrevokable Trust,

Plaintiffs,

DECISION AND ORDER
RJI No.: 15-1-2019-0130E
Index No.: CV19-0262

-against-

GOODNOW FLOW ASSOCIATION, INC.,

Defendant.

APPEARANCES:

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GLEN T. BRUENING, J.:

Defendant Goodnow Flow Association, Inc. (GFA) is a nonprofit organization formed to, among other things, acquire and lease lands for the recreational use of its members, who own the lots surrounding and abutting the Goodnow Flow lake located in the Town of Newcomb, Essex County (Goodnow Flow Assn Inc. v Graves, 135 AD3d 1228 [3d Dept 2016]). GFA's purpose is to, among other things, "promote interest in hunting, shooting, fishing, baitcasting, boating and other lawful sports ... and to provide social and athletic recreation for its members" (Doyle

Affidavit, Exhibit A). Through its 2014 bylaws, GFA assessed its membership dues such that owners of contiguous lots – one vacant and one improved with a residence – would be assessed for only one lot. However, in September 2017, GFA amended its bylaws to define a "Lot" for assessment purposes to include

> [t]he owner of every lot abutting the high-water mark on the Goodnow Flow . . . . Owners of multiple lots shall pay dues/assessments for each lot. Beginning with dues year 2019 the owner of a lot that was created by merging multiple pre-existing lots or portions thereof into a single unified metes and bounds deed description shall be subject to dues or assessments for only that lot, provided he or she can demonstrate by deed restriction that such lot cannot be subdivided. Applicability of this Section shall be determined based on the deed in effect on January 1 of the year in which the dues/assessments are collectable.

(Schwartz Affirmation, Exhibit 9, page 3).[1]

Plaintiffs, who are members of GFA, interpret the amended bylaws as requiring owners of contiguous lots – each with distinct boundary line descriptions – to merge their respective contiguous lots into a single lot, with a deed covenant precluding subdivision, which GFA can now enforce through the imposition of additional assessments and penalties (see Schwartz Affirmation, Exhibit 1, page 4). Based on this interpretation, Plaintiffs commenced this action, asserting the following seven causes of action based on GFA's amended bylaws, approved on September 2, 2017:

1) Plaintiffs' first cause of action seeks a declaration pursuant to RPAPL Article 15 that GFA has no claim to Plaintiffs' properties, contending that GFA lacks the property interest to impose restrictive covenants on Plaintiffs' chains of title;

2) Plaintiffs' second cause of action seeks declaratory relief that the amended bylaws are invalid and void as constituting an unreasonable restraint on the alienability of

[1]Amendments to GFA's bylaws require "an affirmative vote of at least two-thirds (2/3) of the votes cast counting in person and absentee ballots at the annual meeting" (Schwartz Affirmation, Exhibit 4, page 8). Over 70% of members voted to amend the bylaws in 2017 and, as relevant to this action, the amended bylaws were adopted to prohibit a "free-rider" problem – where multi-lot owners merged their lots into a single lot to avoid paying assessments on multiple properties, but then proceeded to subdivide their lots (see Banovic Affidavit).

Plaintiffs' real property;

3) Plaintiffs' third cause of action seeks declaratory relief that the amended bylaws are invalid and void, alleging that the application of the amended bylaws treats multi-lot owners inequitably in violation of the NPCL, since owners who merged their properties prior to the enactment of the amended bylaws are not subject to a prohibition on subdividing;

4) Plaintiffs' fourth cause of action seeks declaratory relief that the amended bylaws are invalid and void, alleging that the amended bylaws create a new classification of membership, which inequitably treats newly-merged single lot owners in violation of the NPCL;

5) Plaintiffs' fifth cause of action seeks declaratory relief that the amended bylaws, insofar as they authorized fines and penalties are unauthorized by the Certificate of Incorporation and violate NPCL 507 by impermissibly penalizing lot owners who choose not to merge their contiguous lots;[2]

6) Plaintiffs' sixth cause of action seeks declaratory relief that the amended bylaws are invalid and void alleging that, since the amended bylaws create a property interest for GFA, they are void as a violation of the NPCL 509 (a) based on GFA's failure to obtain a vote of a majority of the directors of the board;[3] and

7) Plaintiffs' seventh cause of action seeks declaratory relief that the amended bylaws are invalid and void as their adoption was an *ultra vires* act.

GFA now moves, pursuant to CPLR 3211(a) (1), (5), and (7), seeking an order dismissing the Complaint, contending that Plaintiffs' claims are barred by both the statute of limitations, the business judgment rule, and that each cause of action fails to state an actionable

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[2]NPCL 507 (b) provides, among other things, that "assessments may be levied on all classes of members alike or in different amounts or proportions for different classes of members, as the certificate of incorporation or the by-laws may provide, but in all cases the fees, dues and assessments payable by members of one class shall be determined upon the same basis."

[3] NPCL 509 (a) provides that "[n]o corporation shall purchase real property unless such purchase is authorized by the vote of a majority of directors of the board or of a majority of a committee authorized by the board, provided that if such property would, upon purchase thereof, constitute all, or substantially all, of the assets of the corporation, then the vote of two-thirds of the entire board shall be required, or, if there are twenty-one or more directors, the vote of a majority of the entire board shall be sufficient."

claim. Plaintiffs oppose GFA's motion.

In support of its motion, GFA argues that both the 2014 bylaws and the amended bylaws provide for member assessments. While the 2014 bylaws permitted multi-lot owners to avoid paying dues on multiple, contiguous lots, the amended bylaws simply permit GFA to assess dues on each lot equally – under a "one-lot, one-assessment" rule. In the event that an owner does not want to pay an assessment for each lot, the owner has the option of merging the lots, with a deed restriction. GFA argues that, because GFA members were mailed both the 2017 Annual Meeting Minutes on September 15, 2017, and the amended bylaws on October 24, 2017, their Complaint is untimely.[4] With respect to the first cause of action, GFA states that it does not claim any title or right to Plaintiffs' properties. GFA argues that, by their second through seventh causes of action, Plaintiffs seek a declaration that the amended bylaws are invalid and void which should have been brought as a CPLR article 78 proceeding within four months of – at the latest – October 2017, when GFA's amended bylaws became final, thus rendering this action, commenced in May 2019, untimely. GFA also argues that the Complaint is barred by the business judgment rule, as there is no showing that GFA's assessment method, as set forth in the amended bylaws, is unlawful, unequal, or invalid. Finally, GFA argues that the amended bylaws do not treat members unequally as the "one-lot, one-assessment" methodology also applies to lot mergers occurring before 2019. GFA asserts that the amended bylaws simply change the assessment methodology, requiring that annual dues be paid for each lot, but do not restrict Plaintiffs' abilities to develop, subdivide, or use their land as they wish. As an exception, those owners who wish to pay one assessment can avoid an assessment on their contiguous lots by

[4]By correspondence dated December 20, 2017, Plaintiffs challenged GFA's authority to adopt the amended bylaws.

demonstrating by deed restriction that the merged lot cannot be subdivided.

In opposition, Plaintiffs argue that a CPLR article 78 proceeding is unavailable where, as here, they are challenging (1) a "legislative" act, (2) GFA's authority to require members to grant a restrictive covenant limiting their land use and development rights. Plaintiffs note that owners of single lots are able to subdivide without additional assessments, while owners of merged-multiple lots are required to grant a deed restriction to avoid more than one assessment. Plaintiffs argue that the amended bylaws create an unequal method of assessment, as well as violate the rule against unreasonable restraint on alienation of land. [5] Thus, Plaintiffs conclude, this action was timely commenced.

In order to determine the Statute of Limitations applicable to a particular declaratory judgment action, the Court must "examine the substance of that action to identify the relationship out of which the claim arises and the relief sought" (Solnick v Whalen, 49 NY2d 224, 229 [1980]). "If the court determines that the underlying dispute can be or could have been resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs the declaratory judgment action" (Save Pine Bush, Inc. v City of Albany, 70 NY2d 193, 202 [1987]). A declaratory judgment action is generally governed by a six-year statute of limitations period (see CPLR 213 [1]). However, where such action could have been brought as a proceeding pursuant to CPLR Article 78, a four-month limitations period applies (see CPLR 217; Solnick v Whalen, 49 NY2d at 229). If the four-month statute of limitations applicable to article 78 proceedings applies in this case, then this action is untimely.

[5] Alternatively, Plaintiffs argue that, even if this action should have been commenced as a CPLR article 78 proceeding, the new assessment methodology was not scheduled to take effect until January 2019 and is vague as to when it would be final.

A CPLR Article 78 proceeding may be brought for, among other things, a judgment that a body or officer proceeded in excess of its jurisdiction or that a determination was made in violation of lawful procedure (see CPLR 7803[2], [3]) and is generally limited to challenge the administrative procedures followed by that body or officer, and may not be used to challenge the validity of a legislative act (see Matter of Save the Pine Bush v City of Albany, 70 NY2d 193, 202 [1987]). "The determinative question . . . .is whether the challenge is to a legislative act since such a challenge cannot be pursued in a CPLR article 78 proceeding but rather must be maintained in an action for a declaratory judgment" (Frontier Ins. Co. v Town Bd. of Town of Thompson, 252 AD2d 928, 929 [3d Dept 1998] [internal quotation marks and citations omitted]).

"An action or a determination is deemed to be administrative where it is characterized by its individualized application, limited duration, and informal adoption, e.g., resolution by the governing body" (Bennett Rd. Sewer Co. v Town Bd. of Town of Camillus, 243 AD2d 61, 66 [4th Dept 1998] [internal quotation marks and citations omitted]). An action or determination is deemed to be legislative when the dispute centers upon a rule of general applicability rather than an ad hoc determination of an individual party's particular rights (see Solnick v Whalen, 49 NY2d at 231–232). In other words, where the challenge goes to the "wisdom or merit" of the law, rather than the procedure by which it was enacted, relief may not be had in an Article 78 proceeding (P & N Tiffany Properties, Inc. v Vill. of Tuckahoe, 33 AD3d 61, 63-64 [2d Dept 2006]).

In this matter, the Court finds that the amended bylaws, which establish a new methodology for assessing contiguously owned lots, effective January 2019 and continuing, was a legislative act, given its general applicability, indefinite duration, and formal adoption (see

Frontier Ins. Co. v Town Bd. of Town of Thompson, 252 AD2d at 929 [A town law establishing a sewer rent schedule for the town sewer district was a legislative act, given its general applicability, indefinite duration, and formal adoption]; compare Laker v Assn of Prop. Owners of Sleepy Hollow Lake, Inc., 172 AD3d 1660, 1662 [3d Dept 2019] [holding that the property owners were entitled to a preliminary injunction arising from their association's restriction of short-term rentals, where the owners had purchased their properties as second or retirement homes and used the income from short-term rentals to satisfy the carrying costs]). As it is clear that Plaintiffs are challenging a legislative act, this action is timely as it must be maintained as a declaratory judgment action, and is governed by the six-year statute of limitations period set forth in CPLR 213 (1).

In addressing GFA's motion seeking to dismiss for failure to state a cause of action pursuant to CPLR 3211(a) (7), the sole criterion is whether, from the Complaint's "four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). For purposes of a CPLR 3211(a) (7) motion, the facts pleaded are presumed to be true and are to be accorded every favorable inference. Applying this standard, the Court finds that, while Plaintiffs are not obligated to grant a subdivision restriction, their refusal results in assessments, which could be enforced by GFA, and which could result in GFA obtaining an interest in Plaintiffs' property. The Court also finds that, contrary to GFA's arguments, the amended bylaws are unclear as to how the amendment will effect owners who merged their contiguous lots in the past, and there is no indication how the amended bylaws will effect the owners of single lots of comparable size to newly merged lots that are subject to the restriction. Finally, as Plaintiffs have alleged that GFA has exceeded the authority set forth in its governing documents, the Court declines to dismiss this action based on

the business judgment rule (see Laker v Assn of Prop. Owners of Sleepy Hollow Lake, Inc., 172 AD3d 1660, 1662 [3d Dept 2019]).[6]

Accordingly, it is hereby

ORDERED that Defendant's motion seeking dismissal of the Complaint is denied.

This constitutes the Decision and Order of the Court. This Order has been uploaded onto the New York State Court's Electronic Filing System (NYSCEF). Counsel is not relieved from the applicable provisions of 22 NYCRR 202.5-b (h) (3) with respect to Notice of Entry.

IT IS SO ORDERED.

ENTER.

Dated: March 6, 2020
Saratoga Springs, New York

Glen T. Bruening
Acting Supreme Court Justice

The Court considered the following papers:

By Plaintiffs:
Affidavit of Richard J. Doyle, sworn to on August 19, 2019, with Exhibits A-B;
Affirmation of Michael Crowe, Esq., dated August 20, 2019;
Affirmation of Michael Crowe, Esq., dated January 22, 2020, with Exhibit A.

By Defendant:
Notice of Motion, dated July 11, 2019;
Affirmation of Jessie P. Schwartz, Esq., dated July 11, 2019, with Exhibits 1-11;
Memorandum of Law, dated July 11, 2019;
Affidavit of Edward J. Banovic, sworn to on July 11, 2019;
Reply Affirmation of Jesse P. Schwartz, Esq., dated August 26, 2019;
Supplemental Affidavit of William Fibiger, sworn to on January 18, 2020, with Attachment;
Correspondence, dated January 22, 2020, with Attachment.
Reply Affirmation of Jonathan M. Bernstein, Esq., dated December 7, 2017, with attachment;
Correspondence, dated April 11, 2018.

[6]While Plaintiffs request that this Court issue a determination granting the relief sought, the Court declines to do so.