

Hochmann v Town of Clarkstown

2023 NY Slip Op 31751(U)

March 15, 2023

Supreme Court, Rockland County

Docket Number: Index No. 035405/2022

Judge: Amy S. Puerto

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
GEORGE HOEHMANN, DONALD FRANCHINO,
and THOMAS FOLEY,

Plaintiffs,

INDEX NO.: 035405/2022

-against-

Sequence Nos. 1 & 3

THE TOWN OF CLARKSTOWN and the
TOWN BOARD of the TOWN OF CLARKSTOWN,

Defendants,

FRANK BORELLI and PATRICK CARROLL,

Intervenors.

-----X
PUERTO, J.S.C.

Motion Sequence #1

The following papers (e-filed documents 11-16; 50; 54-55) were read on the e-filed Motion for Summary Judgment filed by the Plaintiffs:

Papers

- Notice of Motion, Statement of Material Fact, Affirmation and Memorandum in Support, Exhibits A & B
- Affirmation in Opposition (filed on behalf of the Defendants by Deputy Town Attorney Kevin Conway), and Affidavit in Opposition
- Reply

Motion Sequence #3

The following papers (e-filed documents 45-49; 54-57) were read on the Cross Motion for Summary Judgment and Motion to Dismiss on behalf of Intervenors:

Papers

- Notice of Cross-Motion, Affirmation in Support, Statement of Material Facts; Exhibits 1 & 2

Affirmation and Memorandum of Law in Opposition to Cross-Motion (filed by counsel for the Plaintiffs)

Affirmation in Reply and Exhibit (filed on behalf of Intervenor)¹

Upon reading the foregoing papers, it is

ORDERED that the branch of motion sequence number one, wherein the Plaintiffs seek summary judgment pursuant to CPLR § 3212, and a declaratory judgment from the Court finding Chapter 263 of the Town Code invalid because the local law was never submitted to the voters in a referendum, is DENIED; and it is further

ORDERED that the branch of motion sequence number one, wherein the Plaintiffs seek a declaratory judgment from the Court finding Chapter 263 of the Town Code invalid on the grounds that its requirement for a supermajority vote of the Board to repeal Chapter 263, is inconsistent with Town Law § 63 and Municipal Home Rule Law § 20, is DENIED; and it is further

ORDERED that the branch of motion sequence number three, wherein the Intervenor seeks summary judgment dismissing the Plaintiffs' first cause of action as barred by the statute of limitations, pursuant to CPLR § 3211(a)(5), is GRANTED; and it is further

ORDERED that the branch of motion sequence number three, wherein the Intervenor seeks summary judgment pursuant to CPLR § 3212, is GRANTED.

On December 22, 2022, GEORGE HOEHMANN, DONALD FRANCHINO, and THOMAS FOLEY ("Plaintiffs") filed summons and complaint challenging Local Law 9, incorporating Chapter 263, which imposes term limits for Board Members of the Town of Clarkstown. Chapter 263 also provides that the term limitation can only be repealed by a majority, plus one, of the Board.

On January 5, 2023, the TOWN OF CLARKSTOWN and the TOWN BOARD of the TOWN OF CLARKSTOWN ("Defendants") filed an answer to the complaint.

¹ The Defendants did not submit a response to the Intervenor's cross-motion for summary judgment.

On January 10, 2023, the Plaintiffs filed a motion for summary judgment and for a declaratory judgment, requesting the Court find Chapter 263 invalid (motion sequence one). On February 8, 2023, the Defendants filed a response in opposition to the Plaintiffs' motion.

On February 7, 2023, FRANK BORELLI and PATRICK CARROLL ("Intervenors"), filed a cross motion for summary judgment. On February 9, 2023, the Intervenors filed an answer to the Plaintiffs' summons and complaint. The Plaintiffs filed a response in opposition, and the Intervenors filed a reply.

The parties agree there is no dispute of the material facts, and the following is a legal decision based on the Parties' submissions and oral arguments held on March 10, 2023.

Chapter 263 of the Code of the Town of Clarkstown ("the statute") was introduced on August 5, 2014. Notice was published, and a public hearing was held. The statute was adopted by the Town Board of the Town of Clarkstown ("the Board") in a vote of 5-0. The statute, entitled "TERM LIMITS," states that, "[t]he term of any elected Clarkstown official elected in a regular election after January 1, 2015, shall not exceed eight consecutive years." In essence, it imposes term limits on Board Members for the Town of Clarkstown. The statute also provides that repealing this two-term limit legislation requires a majority vote of the Board, plus one (a supermajority).

Issue 1

The Plaintiffs contend that the majority plus one requirement for repealing the statute "curtails" the power of an elected Board member, and therefore, in accordance with Municipal Home Rule Law § 23, its passage also required that the statute be subject to a voter referendum. In this case, the statute was never put to a voter referendum and therefore, the Plaintiffs assert, it never became law, and any attempt to enforce the law is invalid.

The Defendants and the Intervenors assert that the statute of limitations to challenge the statute has expired. The Plaintiffs respond that their claim is not subject to the statute of limitations because it is a challenge to the validity of the statute itself, and thus, is a continuing harm.

To determine the applicable statute of limitations for a declaratory judgment action, a Court must examine the challenge, and where the dispute, “can be, or could have been, resolved in an action or proceeding for which a specific limitation period is statutorily required, that limitation period governs” (Village of Islandia v. County of Suffolk, 162 A.D.3d 715, 716 [2d Dept. 2018]). Where a legislative challenge “is directed to the procedure followed in enacting, rather than the substance of, legislation,” the matter can be raised in a proceeding pursuant to CPLR Article 78 (id. at 717).

In Islandia, the county passed a statute without holding a public referendum, as required. The plaintiffs asserted that without the required referendum, the law was void. The Second Department held that the plaintiffs’ legislative challenge was, “directed to the procedure followed in enacting, rather than the substance of, legislation” and that therefore, “a proceeding pursuant to CPLR Article 78 may be maintained.” Accordingly, the four-month statute of limitations for an Article 78 proceeding applied to the plaintiffs’ legislative challenge.

The facts in the instant case mirror those in Islandia -- a statute passed, but the statute was never subject to a public referendum as required, and the Plaintiffs assert the law is void/invalid. This Court is bound by the Second Department’s decision in Islandia, and finds that since the Plaintiffs’ challenge to the statute could have been maintained in an Article 78 proceeding, the four-month statute of limitations for an Article 78 proceeding is applicable (id.; see also P & N Tiffany Properties, Inc. v. Village of Tuckahoe, 33 A.D.3d 61, 64 [2d. Dept. 2006][“(W)hen the challenge is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an Article 78 proceeding”] [citing Matter of Save the Pine Bush v. City of Albany, 70 N.Y.2d 193, 202 (1987)].

The Court finds the Plaintiffs' claim that the statute imposes a "continuing harm" and therefore not subject to the statute of limitations, unavailing and inapplicable. The cases cited in support of that argument relate to substantive and constitutional challenges to a statute, and not procedural challenges to the statute. In Amerada Hess Corp. v. Acampora, 109 A.D.2d 719, 722 (2d Dept. 1985), the plaintiffs challenged the defendants' denial of an application for rezoning classifications as "unconstitutional" and "confiscatory." The trial court found that the statute of limitations did not bar the plaintiffs' challenge to the denial of the rezoning application because the challenge was a "constitutional attack" on the denial of the application (*id.* ["No period of limitation at all is applicable to an action for a declaratory judgment in cases involving a continuing harm"]). In the instant case, however, the Plaintiffs' claim is that the statute is invalid because it was never put to a public referendum, which the Court in Islandia, *supra*, found to be procedural in nature, and not a substantive challenge to the statute. Accordingly, because the Plaintiffs' legislative challenge to the statute is procedural, rather than substantive, the Article 78 statute of limitations applies (*see Islandia*, 162 A.D.3d at 717 [holding that plaintiffs' challenge to legislative action "due to the defendants' failure to conduct a referendum as required. . . did not address the merits of the defendants' actions, but rather focused on whether certain required procedures had been followed" and that therefore, "these causes of action also could have been brought pursuant to CPLR Article 78, and thus, we agree with the Supreme Court's determination that those causes of action were time-barred pursuant to CPLR 217"]).

The Plaintiffs assert that their challenge only became ripe once they decided to seek additional terms beyond the limits outlined in the statute. Hence, they argue that there was no injury until the statute prevented them from running and prevented voters from voting for their

desired candidate. The Court rejects this contention. In Gizzo v. Town of Mamaroneck, 36 A.D.3d 162 (2d Dept. 2006), the plaintiff challenged a town law regarding law enforcement disciplinary hearings passed without a public referendum. The plaintiff worked as a police officer in the town but did not reside there. Despite the fact that it was with regard to an issue of standing and not statute of limitations, the Court found that, “[T]he purpose of the referendum requirement is to ensure that electors have a voice when substantial changes are proposed to the powers of the officials whom they elect” (Gizzo, 36 A.D.3d at 168). Thus, the injury triggering the challenge to the validity of a statute was not the effect that the statute had on the police officer whose work was impacted by the new law, but rather, the deprivation of the voters of the Town of Mamaroneck who were deprived of the right to vote in the public referendum that never was.

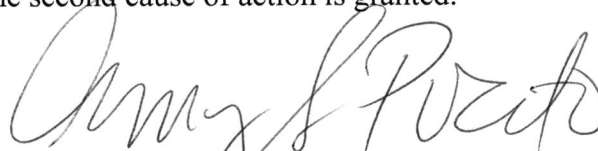
The Court finds that because the statute of limitations for an Article 78 proceeding applies, the Plaintiffs’ window of time to challenge the enactment of Chapter 263 expired more than eight years ago (see CPLR § 217). Accordingly, the Intervenors’ motion to dismiss the first cause of action on the grounds that the statute of limitations has expired, is granted (see CPLR § 3211[a][5]).

Issue 2

The Plaintiffs seek a declaratory judgment, asserting the limitations of Town Law § 63 and Municipal Home Rule Law (“MHRL”) § 20, prohibit local laws from requiring a supermajority vote of the Board in order to enact a law. The Court disagrees. Section § 20 of the MHRL provides that no local law, “shall be passed except by *at least* the majority affirmative vote of the total voting power of the legislative body” (see MHRL § 20[1] [emphasis added]). Section 63 of the Town Law provides that, “[e]very act, motion or resolution shall require for its adoption the affirmative vote of a majority of all the members of the town board.” Read together, the Court

finds the statutes simply require a minimum number of votes for passing a local law, and do not impose a bar on a law requiring a majority of the Board, plus one vote. Accordingly, the Plaintiffs' motion for summary judgment on their second cause of action is denied, and the Intervenors' motion for summary judgment dismissing the second cause of action is granted.

Dated: New City, New York
March 15, 2023



HON. AMY S. PUERTO
Justice of the Supreme Court

Via E-filing to the attorneys of record