

Hampshire Recreation, LLC v Village of Mamaroneck

2023 NY Slip Op 34626(U)

May 30, 2023

Supreme Court, Westchester County

Docket Number: Index No. 56207/2021

Judge: William J. Giacomo

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.**

----- X
HAMPSHIRE RECREATION, LLC,

Plaintiff,

Index No. 56207/2021

– against –

Motion Seq. 2

THE VILLAGE OF MAMARONECK and THE
VILLAGE OF MAMARONECK PLANNING BOARD,

DECISION & ORDER

Defendants.

----- X

By order dated May 4, 2022, this court denied defendants The Village of Mamaroneck and The Village of Mamaroneck Planning Board’s (hereinafter “defendants”, “Village of Mamaroneck” and/or “Planning Board”) motion, pursuant to CPLR 3211 (a) (1) and (7), for an order dismissing plaintiff Hampshire Recreation, LLC’s complaint, and ordered defendants to serve their answer. Defendants now move, pursuant to CPLR 2221, for leave to renew their motion to dismiss the complaint and, upon renewal, for dismissal of the complaint. For the reasons set forth below, the defendants’ motion is denied.

Papers Considered NYSCEF DOC NO. 1-10; 23-27; 36-39; 41, 43-44, 58-66, 68-77.

1. Summons & Complaint/Exhibits A-I
2. Notice of Motion/Affirmation of Robert A. Spolzino, Esq./Exhibits A-B/Memorandum of law
3. Memorandum of law in opposition/Exhibit A/Affirmation of David J. Cooper, Esq. in opposition/Exhibit A
4. Reply memorandum of law
5. Decision and Order on Motion
6. Notice of Motion/Affirmation of Robert A. Spolzino, Esq./Exhibits A-F/Memorandum of law
7. Memorandum of law in opposition
8. Memorandum of law in reply/Affirmation of Robert A. Spolzino, Esq./Exhibits A-E

9. Correspondence regarding late reply papers

Factual and Procedural Background

The facts were previously set forth in this Court's decision and order dated May 4, 2022. *See* NYSCEF Doc. No. 43, Order. The following procedural and factual background relates to the matter currently before the Court: In 2010, plaintiff purchased the 106-acre Hampshire Country Club property (property, or site) which is located in the Village of Mamaroneck, New York at 1025 Cove Road, a/k/a 1107 Cove Road N., Mamaroneck, New York 10543. NYSCEF Doc. No.1, Complaint, ¶ 14. Plaintiff purchased the property, "under the reasonable expectation that, with the R-20 Zoning in place, it could be developed for residential purposes." *Id.*, ¶ 2. In June 2015, plaintiff submitted a proposal to defendants for a "planned residential development" (PRD) Project, which would result in construction of a 105-unit residential development at the property site. On May 7, 2020, the Planning Board adopted a New York State Environmental Quality Review Act (SEQRA) Findings Statement and a series of Resolutions, determining that the Village of Mamaroneck's local regulations prohibit any residential development on the property.

Instant Action:

In May 2021, plaintiff filed a summons and complaint, alleging that the Planning Board's denial of the proposed residential development plan constituted a regulatory "taking" of plaintiff's property without compensation pursuant to Article 1, Section 7 of the New York State Constitution. The complaint asserted that the Planning Board's refusal to permit development on the property was arbitrary, capricious, and contradicted by or not supported by substantial evidence, would erase nearly all of the property's economic value, and would interfere with plaintiff's distinct investment-backed expectation of significant profits from developing a residential project on the property consistent with the permitted uses under the Village Code.

Defendants moved, pre answer, pursuant to CPLR 3211(a)(1) and (7), to dismiss the complaint based upon the documentary evidence and for failure to state a cause of action. In brief, defendants claimed that plaintiff purchased the property subject to numerous regulatory restrictions and cannot now base a regulatory takings claim on the ground that it has the unrestricted right to develop the property for residential use. Defendants also argued that the complaint failed to state a cause of action for an alleged unconstitutional taking because there had been no final decision as to whether the plaintiff could develop the property in an alternative way to receive economic benefit from the property. For instance, although the Planning Board denied

plaintiff's proposal for this specific development project, plaintiff allegedly could have proposed a different development, but chose not to do so.

This Court denied defendants' motion for an order dismissing the complaint, concluding that the complaint sufficiently stated a cause of action against the Planning Board for a regulatory taking. *See* NYSCEF Doc. No. 43. Although defendants had argued that plaintiff could not establish a claim because only one option for development was denied by the Planning Board, leaving other alternatives available, plaintiff had alleged that "no less than sixteen alternative densities, layouts and housing types were evaluated by the Planning Board." *Id.* at 4. Further, plaintiff had also claimed that "the Planning Board has stripped it of its ability to use the property for residential purposes in accordance with R-20 zoning, which it is undisputed that the property is zoned for, which results in a de facto rezoning of the property precluding any residential use." *Id.*

Motion For Leave to Renew

Defendants now move for leave to renew the motion to dismiss the complaint, and, upon renewal, for dismissal of the complaint. The record indicates that plaintiff commenced a separate proceeding pursuant to Article 78, seeking to annul and reverse the Planning Board's SEQRA's Findings Statement, as well as the Denial Resolutions, as arbitrary, capricious and a violation of the substantive requirements of SEQRA. On November 17, 2022, the Honorable Linda Jamieson granted the petition, to the extent of remanding the matter to the Planning Board to reconsider and reassess certain issues in the proposed development plan. NYSCEF Doc. No. 71, Article 78 Decision. The Planning Board was instructed "to set forth more clearly whether any excavation is required and, if so, for [plaintiff] to address it as soon as practicable thereafter," and was also directed to "take a 'hard look' at the open space," among other things. *Id.* at 9, 13.

According to defendants, this Article 78 Decision, which was issued seven months after this Court denied defendant's motion to dismiss, would constitute a "new fact," which would entitle defendants leave to renew the motion to dismiss and ultimately change the prior outcome of that motion. Defendants set forth that, "[i]n order for a takings claim to state a cause of action, the determination that allegedly caused the taking must be 'final,' in that the municipality has specifically stated its position without any possibility of reconsideration or alternative result." NYSCEF Doc. 60, Spolzino affirmation in support, ¶ 3. Here, however, as a result of

the Article 78 Decision remanding the matter to the Planning Board for additional review, the alleged taking is not final, and the complaint must be dismissed. *Id.* Defendants also argue that, although the instant motion was for leave to renew, they may move to dismiss as of right based on lack of subject matter jurisdiction, despite already filing an earlier motion to dismiss.

In opposition, plaintiff argues that the motion for leave to renew must be denied, as the Article 78 Decision does not render the takings claim unripe, nor does it constitute a new fact which would change the prior determination denting Defendants' motion to dismiss. To start, plaintiff argues that remanding to the Planning Board does not change the finality of the determination, thereby making the takings claim unripe, because waiting for an end decision to be reached would be futile. Plaintiff alleges that it has been attempting to introduce the property to the Planning Board for ten years, and that, even on remand, defendants will not change their position. According to plaintiff, the Planning Board is predetermined to deny the project regardless of the available alternatives. It continues that "[d]efendants will not even provide Hampshire with the opportunity to return to the Planning Board," and explains that defendants have filed a Notice of Appeal of the Article 78 Decision, effectively staying the proceedings before the Planning Board until the outcome of the Appeal. NYSCEF Doc. No. 68, plaintiff's memorandum of law in opposition at 9-10. In addition, defendants allegedly engaged in repetitive and unfair procedures to avoid a final decision, which precludes defendants from asserting that the matter is unripe for adjudication. Finally, to the extent that defendants are attempting to bring a second motion to dismiss, since any attempt to return to the Planning Board is futile, the Article 78 Decision does not divest this Court of subject matter jurisdiction.

Plaintiff further argues that defendants failed to demonstrate how the Article 78 Decision remanding the matter to the Planning Board would change the prior determination denying defendants' motion to dismiss. According to plaintiff, this Court already rejected defendants' argument that the complaint should be dismissed as unripe for lack of a final decision because there may be other alternatives to present to the Planning Board.

DISCUSSION

I. Motion to Leave to Renew

A motion for leave to renew must be based, in pertinent part, on "new facts not offered on the prior motion that would change the prior determination." CPLR 2221 (e) (2). "A motion for leave to renew is addressed to the sound discretion of the court." *Matheus v Weiss*, 20 AD3d

454, 454-455 (2d Dept 2005). On a motion to dismiss pursuant to CPLR 3211 (a) (7), “the facts as alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference,” and the court must determine simply “whether the facts as alleged fit within any cognizable legal theory.” *Mendelovitz v Cohen*, 37 AD3d 670, 671 (2d Dept 2007). On a motion to dismiss pursuant to CPLR 3211(a)(1), “[d]ismissal is warranted only if the documentary evidence establishes a defense to the asserted claims as a matter of law. Thus, defendant bears the burden of demonstrating that the proffered correspondence conclusively refutes plaintiff’s factual allegations.” *Kolchins v Evolution Mkts., Inc.*, 31 NY3d 100, 106 (2018) (internal quotation marks and citations omitted).

As discussed above, this Court concluded that the complaint sufficiently alleged a cause of action for a regulatory taking and that defendants failed to submit documentary evidence conclusively establishing a defense as a matter of law. This court expressly found the controversy ripe for adjudication, despite defendants’ arguments that the Planning Board’s denial of the plaintiff’s proposal did not constitute a final determination as it did not preclude plaintiff from proposing other alternatives that would enable plaintiff to derive economic benefit from the property. This court further found that plaintiff had sufficiently alleged the elements of a regulatory taking claim when asserting that plaintiff was unable to use the property for residential purposes, despite the property’s R-20 zoning.

In its motion for leave to renew, defendants rely on new facts consisting of the Article 78 Decision remanding the proposed development plan back to the Planning Board for further consideration and to address certain deficiencies. Defendants assert that the Article 78 Decision renders plaintiff’s takings claim unripe, and the prior motion to dismiss should be granted on this basis. Defendants specifically allege that a “plaintiff cannot claim a regulatory taking if the Board is still considering the proposed development plan for potential approval” NYSCEF Doc. 59, Memo of law at 6. Here, however, the record indicates that the Village itself filed a notice of appeal in the Article 78 Decision, resulting in a stay of any pending review by the Planning Board. Furthermore, in the Article 78 Decision, the court specifically declined plaintiff’s request for the court to make a determination that the proposed plan should be approved, and noted that it was addressing issues presented at the court-ordered hearing. Accordingly, the motion for leave to renew is denied, as the new facts relied on would not change the Court’s prior determination that the complaint sufficiently stated a cause of action

against the Planning Board for a regulatory taking when it denied plaintiff's proposed residential development plan. *See e.g. Gall v Colon-Sylvain*, 151 AD3d 701, 703 (2d Dept 2017) ("Here, the Supreme Court should have denied the plaintiff's motion for leave to renew, since the newly submitted evidence would not have changed the prior determination"). The Court is similarly unpersuaded that it lacks subject matter jurisdiction over the matter, as a result of the Article 78 Decision remanding the matter to the Planning Board.

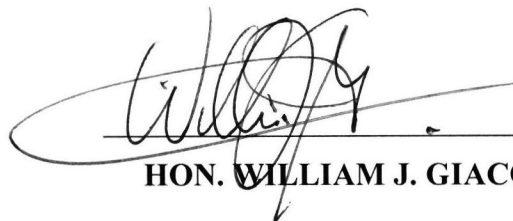
As a result of this decision, the Court need not address the remaining arguments.¹

Accordingly, it is hereby

ORDERED that defendants motion, pursuant to CPLR 2221, for leave to renew their motion to dismiss the complaint and, upon renewal, for dismissal of the complaint, is DENIED; and it is further

ORDERED that the parties shall appear for a virtual Compliance Conference with the assigned Court Attorney Referee on June 13, 2023 at 9:30 A.M. virtual to update the Discovery Motion Briefing Schedule.

Dated: White Plains, New York
May 30, 2023



HON. WILLIAM J. GIACOMO, J.S.C.

¹ In its discretion, the Court has considered defendants' late reply papers.