

Town of Gardiner v Bradley
2024 NY Slip Op 35047(U)
March 26, 2024
Supreme Court, Ulster County
Docket Number: Index No. EF2023-3059
Judge: Kevin R. Bryant
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NOW, it is hereby ORDERED, that the Order to Show Cause is granted as set forth below¹.

Findings of Fact

The instant proceedings relate to the use of a parcel of real property located in the Town of Wallkill which is owned by Defendant and referred to as “the Reserve”. Defendant maintains that “[a]mong other things, the Reserve has functioned and conducted activities as a campground for over fifty years”. The Town of Wallkill maintains that the current uses of the property are in violation of the Town Code.

The dispute regarding the property was previously before this Court in an Article 78 proceeding brought by the property owner against the Town of Wallkill². In that proceeding, Defendant requested that this Court invalidate a resolution of the Town finding that Defendant’s application for a campground was incomplete for ten reasons including, but not limited to the failure to submit an Environmental Assessment Form (hereinafter referred to as “EAF”) as required by SEQRA and the failure to submit a map/plan that indicates the location of the zoning districts that bisect the subject property. The Board further found that the Defendant seemingly illegally erected structures for year-round use without authorization and required permits and that Defendant previously constructed Geo Domes on the property that “appear to be permanent structures that have been installed without building permits and proper authorizations”. In addition, the Board found that Defendant has not established a compliant and adequate water supply, sanitation system and drainage system³.

¹ In determining this motion, this Court has considered documents filed on NYSCEF as cited above as well as all other filings in this matter that have been electronically filed with the Court.

² See, NYSCEF EF2023-474

³ NYSCEF doc. 16

Rather than comply with the Board's resolution, Defendant filed an Article 78 proceeding which, in essence, asked this Court to interject itself into the administrative process prior to the Board having an opportunity to evaluate and make determinations on a complete application. This Court dismissed the Article 78 proceeding filed by Defendant on the grounds that she had failed to exhausted administrative remedies. This Court explained that:

rather than present any persuasive reason to disrupt the finding of the Board that the application was incomplete, or alternatively, to comply with the findings of the Board and resubmit their application, [Defendant] asks this Court to intervene in an administrative process that has not run its course. In this regard, the Court notes that [Defendant] had the right to request that the CEO provide an interpretation regarding their alleged non-conforming use and, in-the-event that [Defendant] disagreed with the opinion of the CEO, [Defendant] could have appealed that determination to the Zoning Board of Appeals⁴.

Had [Defendant] properly pursued this course, the ZBA would have conducted a hearing, considered evidence and created a full record regarding [Defendant's] pre-existing non-confirming use claim. Similarly, it is the responsibility of the Town Board or the ZBA to hold a hearing regarding the various factual disputes, including, but not limited to the issue of whether the GeoDomes are permanent structures, whether [Defendant's] use of the property as a campground has remained consistent since prior to the enactment of the Code or whether it has been abandoned. The fact that such a hearing has not taken place, and there are no specific findings-of-fact for this Court to review, precludes this Court from intervening at this juncture⁵.

Defendant filed a Notice of Appeal from this Court's Order and also filed a Motion to Reargue. The Motion to Re-Argue was denied by this Court by written decision dated September 5, 2023. On or about December 6, 2023, Defendant requested an extension of sixty days to perfect their appeal to February 20, 2024. To date, the appeal has not been perfected nor has the Appellate Division granted any further extensions⁶.

⁴ See, Town of Gardiner Code, §§220-27; 220-59

⁵ NYSCEF File EF2023-474, doc. 47

⁶ NYSCEF CV-23-1102

On or about October 27, 2023, Defendant wrote to Plaintiffs stating, in relevant part,

[e]nclosed is my application for a campground license for submission to the Town Board . . . I reviewed the Town website for an application form for this application . . . there does not appear to be any application for a campground license. I also enclose, with my application, Mr. Lewis' email determination . . . wherein the Code Enforcement Official wrote 'take note of section 200-45 3.C, this is regarding existing campgrounds. I believe you fall into this category'.

Despite this Court's prior ruling that no official determination was made, Defendants continues that this "**determination** was not challenged" (emphasis supplied)⁷.

In response, by letter dated November 8, 2023, Defendant was advised that

[i]t appears that the Application is premised upon a notion that the . . . CEO previously determined that the proposed use and structures constitute a pre-existing, non-confirming use . . . As you should be aware, this contention is incorrect and has been repeatedly rejected by the Ulster County Supreme Court At this juncture, the pre-existing, non-confirming use allegations . . . have not been established and determined by the proper government officials/board, nor did you appear to have applied for same . . . Accordingly, without waiver and with full reservation of rights, we herewith return your application to you. This letter is not intended to respond to every aspect of the application that may be defective . . . nor does it waive the Town's right to enforce against any and all violations that may exist at the subject property⁸.

The instant complaint was filed on December 20, 2023. Therein, the Town of Gardiner alleges that Defendant has continued to unlawfully operate their campground on the property in violation of the Town Code and have failed to either complete the application as outlined by the Town Board nor have they requested a formal interpretation from the CEO regarding the claimed pre-existing non-confirming use. The Town alleges that "the unlawful uses at the Subject Property include unlicensed use of the property as a purported 'campground', and an unlawful apparent year-round 'lodging use of the property in structures that appear to have been installed

⁷ NYSCEF doc. 26

⁸ NYSCEF doc. 27

and/or renovated without permits, without proper authorization, without certificates of occupancy and without any established pre-existing non-confirming use determination”.

Plaintiff requests that this Court issue a preliminary and permanent injunction pursuant to Town Law §268 and CPLR §6301 and that this Court declare that “Defendant’s construction and use of GeoDomes at the Subject Property as a lodging facility use and/or campground use without permits, approvals, licenses and certificates of occupancy/compliance are illegal”.

In their affirmation in opposition, despite the previous findings of this Court, Defendant argues, *inter-alia*, that the claim is barred by estoppel in that “site visits were made to defendant’s property and, in reliance thereon, defendant made repairs and committed substantial resources to her property”. They further argue that the request for a license was approved by default and that the Town exceeded its authority when the application was rejected. As a counterclaim, Defendant once again alleges that “Defendant’s property contains lawfully existing, nonconforming uses which the plaintiff may not now claim to prevent” and, despite this Court’s prior findings, yet again asks this Court to adjudicate the preexisting non-conforming use claim. Defendant further argues that the campground licensing law is “unconstitutional and illegal”.

Petitioner has submitted a “verified reply” to the counterclaims⁹ wherein they argue that “Defendants have not been deprived of the use of her property and cannot possibly establish an unconstitutional taking as a matter of law” and further argue, yet again, that “[n]o determination was made by the CEO regarding the alleged lawfulness of the nonconforming uses at the property, and defendant’s persistent argument otherwise has already been twice rejected by this

⁹ NYSCEF doc. 35

Court. Instead, defendant has refused to make formal and proper application regarding the basis and extent of the alleged pre-existing non-conforming uses at the property”¹⁰

Applicable Law

Town Law §268(2) specifically authorizes a Town to file an application seeking an injunction to prevent the unlawful or unauthorized use of a parcel of land in violation of a local zoning law. Generally, “[a] party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger or irreparable injury in the absence of an injunction and a balance of equities in its favor” (Petry v. Gillon, 199 A.D.3d 1277 (3rd Dept., 2021))¹¹. See also, Nobu Next Door, LLC v. Fine Arts Hous. Inc., 4 NY3d 840 (2005); Yeldin v. Lieberman, 102 A.D.3d 769 (2nd Dept., 2013)) and the decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court (Sarker v. Das, ___ A.D.3d ___, 2022 NY Slip Op. 01826 (2nd Dept., 2022)).

The standard for securing an injunction is relaxed in a proceeding brought to restrain an alleged land-use violation of a Town’s zoning Code. In such a situation, if the moving party establishes a violation of the Town’s zoning ordinance, an injunction is appropriate and Plaintiffs “are not required to meet the three-prong test generally applicable to requests for injunctive relief” (Eggert v. LeFever, 222 A.D.2d 1043 (4th Dept., 1995)). “[T]o obtain preliminary injunctive relief based on a violation of a zoning ordinance, a town need not satisfy the traditional three-part test for injunctive relief but is required only to show that it has a likelihood of ultimate success on the merits and that the equities are balanced in its favor” (Town of Brookhaven v. MMCCAS Holdings, Inc., 137 A.D.3d 1258 (2nd Dept., 2016)). See also, Thilberg v. Mohr, 74 A.D.3d 1055 (2nd Dept., 2010); Town of Islip v. Modica Assoc., 45 A.D.3d

¹⁰ NYSCEF doc. 35, para. 32, 33

¹¹ Internal quotations, citations and punctuation omitted from all case quotations herein.

574 (2nd Dept., 2007). “While it is not necessary by virtue of Town Law 268 that plaintiff show irreparable harm as a condition of obtaining injunctive relief, whether immediate relief of this nature should be extended is still a matter governed by equitable principles” (Esopus v. Fausto Simoes & Associates, 145 A.D.2d 840 (3rd Dept., 1968)).

Discussion

This Court has considered the arguments raised by counsel and finds that, under the circumstances, Plaintiff has shown a strong likelihood of success on the merits of their application. In this regard, for the purpose of this motion, the submissions establish that Defendant has disregarded the applicable process under the Town’s zoning code and have continued to engage in a use of the property that requires approval from the Town. Defendant has repeatedly been advised that they need to secure such approval and have ignored the Town’s warnings. Defendant has also ignored this Court’s prior findings that they must follow the administrative process set forth in the Town Code and provide a complete application to the Town as instructed. Given Defendant’s continued refusal to properly apply for permission for the proposed use and their failure to secure required licenses and, where required, certificates of occupancy, it is the finding of this Court that Plaintiff has established a sufficient likelihood of success on the merits.

Moreover, it is the finding of this Court that “a balancing of the equities does not favor the defendants, who failed to act diligently to legitimize their use and occupancy once the were issued notices of violation” (New York v. Bilynn Realty Corp., 118 A.D.2d 511 (1st Dept., 1986)). In this regard, the record is clear that Defendant has been on notice regarding the Town’s position that a camping license and/or special permit was necessary to continue operations. Defendant has also been fully on notice of the Town’s position that there has been

factual determination regarding the claimed pre-existing non-confirming use. These issues were addressed in the previous proceeding before this Court and Plaintiffs clearly and unambiguously stated their position.

More significantly, in its previous decision on the prior matter, this Court specifically found that Defendant has not exhausted its administrative remedies by failing to seek or secure an interpretation from the CEO regarding the pre-existing non-confirming use and by further failing to remedy the deficiencies in their application that were clearly outlined by the Town Board. While Defendant filed a Notice of Appeal regarding this Court's Decision and Order, Defendant has not perfected their appeal in the intervening nine months, nor have they sought any sort of temporary relief from the Appellate Division.

Moreover, despite the clear findings of this Court regarding how this matter should proceed, and the further findings that this Court will not interject itself into these issues prior to a final determination at the administrative level, Defendant continues to try to bypass the administrative process in-order-to secure factual determinations through an incorrect administrative process. This conclusion is underscored by Defendant's assertion in its renewed application that the CEO previously made a "determination" and that "the CEO's determination was not challenged".

At this juncture, there is no factual dispute that Defendant has not secured permits, licenses, certificates, site plan, or other approvals for the current use of the property. This Court again notes that Defendant has annexed a copy of a resubmitted application for a campground license. As explained in this Court's previous decision, the previous application was rejected for numerous reasons and the Board specifically advised Defendants as to what information was lacking. Rather than correct the articulated deficiencies, or alternatively, requesting an opinion

from the CEO that would be reviewable by the ZBA, Defendant once again attempted to bypass the proper process and asked the Town Board to address their pre-existing non-conforming use claim.

Despite this Court's previous ruling, Defendant continues to claim that the current use is a pre-existing non-confirming use, they have not requested nor secured an opinion from the CEO regarding this claim and have not returned to the Town Board with a completed application. Rather, they continue to exercise self-help and argue that absent an enforcement proceeding in Town Court, the Town is precluded from proceeding with this action. Their failure to seek such a determination from the proper administrative office is particularly relevant and leads to this Court's finding that the balancing of the equities favors the Town.

This Court has considered Defendants' arguments in opposition to Plaintiffs' request and finds them to be without merit. As correctly argued by Plaintiffs, there is no authority presented for the position that a Notice of Violation is a pre-requisite to filing a Supreme Court proceeding seeking injunctive relief nor is there any persuasive authority for Defendant's argument that Plaintiffs are estopped from bringing this proceeding. This Court has also considered the remaining counterclaims asserted by Defendant and finds that they are all pre-mature insofar as Defendant has still not exhausted her administrative remedies.

Conclusions

For the foregoing reasons, the Order to Show Cause is granted to the following extent and, pending further Order of this Court, a preliminary injunction shall issue on the following terms:

Defendant is hereby prohibited from operation on the subject property of any "campground" or "lodging" absent approval from the Town.

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Defendants are further prohibited from the use of any structure on the property for any use that has not received specific approval from the Town, such approval including, but not limited to, the securing of any necessary site plan approval, building permits, licenses, certificates of occupancy/compliance, licenses or special permits as required by the Town Code.

The matter is hereby scheduled for a Microsoft TEAMS virtual preliminary conference with the Court on May 9, 2024, at 3:00 p.m. to enter a scheduling Order with-regard-to discovery and further proceedings.

This shall constitute the Decision and Order of the Court.

The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: March 26, 2024
Kingston, New York

ENTER,


HON. KEVIN R. BRYANT, J.S.C.