

Matter of RC Recreation Dev., LLC v Town of Yorktown, N.Y.
2024 NY Slip Op 35509(U)
November 13, 2024
Supreme Court, Westchester County
Docket Number: Index No. 69131/2022
Judge: Paul I. Marx
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
HON. PAUL I. MARX, J.S.C.

-----X
In the Matter of the Application of:

RC RECREATION DEVELOPMENT, LLC,

Index No.: 69131/2022

Petitioner-Plaintiff,

for a Judgment pursuant to Article 78 of the
N.Y. Civil Practice Law & Rules and NY RPAPL § 853

-against-

DECISION AND ORDER

Motion Sequence No. 4

THE TOWN OF YORKTOWN, N.Y.;
MATTHEW J. SLATER, in his Official Capacity as
Supervisor of the Town of Yorktown, N.Y.;
SERGIO ESPOSITO, in his Official Capacity as a member
of the Town Board of the Town of Yorktown, N.Y.;
and JOHN H. LANDI, in his Official Capacity as Building
Inspector for the Town of Yorktown, N.Y.; and
JOHN/JANE DOE, being the one or more contractors
or companies awarded the contract to replace RC Recreation
Development, LLC,

Respondents-Defendants.
-----X

The papers filed electronically on NYSCEF numbered 165 to 187 were read on Plaintiff's motion, pursuant to CPLR 103(c) and 3025(b), seeking (1) to convert this hybrid special proceeding into a civil action and (2) for leave to file an amended complaint.

BACKGROUND

On December 8, 2022, Petitioner-Plaintiff RC Recreation Development, LLC ("RC"), a golf course developer, filed a Combined Verified Petition and Complaint for Declaratory Judgment against Respondents-Defendants The Town of Yorktown, N.Y., Matthew J. Slater, in his official capacity as Town Supervisor, Sergio Esposito, in his official capacity as a member of the Town Board, and John H. Landi, in his official capacity as Town Building Inspector, and "Doe" defendants. RC was the concessionaire of a golf course owned by the Town pursuant to a concession agreement between RC and the Town dated September 19, 2014, and amended on May

24, 2018 (“Concession Agreement”).¹ Pursuant to the Concession Agreement, RC provided recreational facilities to the public at the Town owned park in Jefferson Valley, known as the Valley Fields Golf Course.

By Notice of Termination dated November 16, 2022, the Town terminated the Concession Agreement, citing RC’s repeated failure to meet projected dates to commence full operation of the golf course and restaurant; numerous code violations found upon inspection which led to issuance of a Stop Work Order on July 6, 2022; RC’s failure to cure the deficiencies. The Notice also referenced a written notice of the deficiencies that was provided to RC on or about July 12, 2022; that the Town Board issued a Resolution dated September 6, 2022, finding RC in material breach and providing an opportunity to cure; and the Town inspection on November 15, 2022. The Notice stated that “on November 15, 2022, the Town terminated the Concession Agreement due to RC’s failure to cure the previously noticed material breaches”. NYSCEF Doc # 122. The Notice also recited language from the Concession Agreement stating that “the Town has the absolute right to terminate [the Concession Agreement] at will by providing written notice of such intention to terminate the license at least sixty (60) days prior to the commencement of the golf season on April 1 each year”, and asserted that the Town also terminated the Concession Agreement on that alternative ground. NYSCEF, Doc # 122.

RC claimed that the Town improperly terminated the Concession Agreement. On December 6, 2022, RC filed a Supplemental Notice of Claim with the Town asserting that the Town breached the agreement in various respects, including “premature and unlawful purported termination of the Concession Agreement, as amended ... and forced ouster”. NYSCEF Doc # 174.

On March 31, 2023, the Town moved to dismiss RC’s Second, Third, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and Twelfth causes of action, with prejudice. NYSCEF, Doc ##106-126. The Court granted the motion as to the Second, Third, Fifth, Sixth, Eighth, Ninth and Twelfth causes of action, and denied the motion as to the Tenth and Eleventh causes of action. The Court denied Defendant’s request to dismiss based upon RC’s failure to attend a 50-h hearing. The Court stated that “nothing in this decision shall interfere with any damages that RC may be entitled to under the plain terms of the First Amendment to Concession Agreement for equipment under

¹ By its terms, the Concession Agreement was due to expire on August 31, 2028.

Section 13.”² Decision and Order dated June 15, 2023 (Hon. Charles D. Wood, J.S.C.), NYSCEF, Doc # 133.

Defendants did not move to dismiss the First cause of action which challenged the Stop Work Order as arbitrary and capricious, or the Fourth cause of action which sought a declaration that there was no material breach of the Concession Agreement to support the Town’s termination for cause.

Plaintiff’s First, Fourth, Tenth and Eleventh causes of action remain.

On May 22, 2024, RC moved to convert this special proceeding into a civil action and for leave to file an Amended Complaint to allege four causes of action: (1) breach of the Concession Agreement; (2) declaratory judgment seeking declarations of breach by the Town; (3) retaliation for the exercise of RC’s free speech rights against the individual Defendants; and (4) denial of procedural due process under the State Administrative Procedures Act and the NYS Constitution.in connection with the Stop Work Order.

DISCUSSION

RC contends that the matter should be adjudicated as a civil action rather than a hybrid Article 78 proceeding, because it is the more appropriate vehicle for its breach of contract and other claims relating to the Concession Agreement.

Breach of contract claims which arise from the same facts may be included in a “hybrid” article 78 proceeding, as RC has done in this case with its anticipatory breach causes of action (Second and Third causes of action). *See e.g., 517-525 W. 45 LLC v New York City Dep’t of Hous. Pres. & Dev.*, 225 AD3d 478, 479 [1st Dept 2024] (citing *Matter of Mulgrew v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 193 AD3d 656 [1st Dept. 2021]). While separate procedural rules apply to Article 78 causes of action and those seeking damages and declaratory relief, because this case asserts both types of claims, the Court can apply the appropriate procedural vehicle to the causes of action according to the relief sought. *See Kelly v Farmingdale State Coll., State Univ. of New York*, 215 AD3d 748, 750–51 [2nd Dept 2023] (citing (*Matter of Rosenberg v New York State Off. of Parks, Recreation, & Historic Preserv.*, 94 AD3d 1006, 1008; *see Matter of Perrotta v Syosset Cent. Sch. Dist.*, 210 AD3d 986, 989; *Matter of Muller v Zoning Bd. of Appeals Town of*

² The Court’s statement is dicta. The Notice of Termination clearly grounded the termination of the Concession Agreement on material breaches. Termination at will was stated as an alternative basis.

Lewisboro, 192 AD3d 805, 808). Consequently, there is no need to convert the action to a civil action.

RC seeks leave to file an amended complaint, asserting the bedrock legal principle that amendment of pleadings should be freely granted. RC notes that Defendants were on notice of its claimed breach of the Concession Agreement and the factual circumstances, asserting that the pleadings alleged an anticipatory breach that has ripened. RC asserts that its proposed amendment is not palpably insufficient or patently devoid of merit, as the Court has determined that the Town invoked its right to terminate the Concession Agreement at will and RC may seek damages under the Concession Agreement for the exercise of that right. RC asserts that if the Town, as it now claims, terminated the agreement for cause, RC has the right to have the propriety of that basis for termination adjudicated, which has yet to occur.

The Court construes RC's request to convert the action and amend its pleading as a withdrawal of its Article 78 claim asserted in its First cause of action seeking to challenge the Stop Work Order as arbitrary and capricious. RC's proposed amendment seeks to add a breach of contract claim and to clarify its other remaining causes of action. The Fourth cause of action initially sought a declaration that there was no material breach of the Concession Agreement to support the Town's termination for cause. Plaintiff now wishes to recast its Fourth cause of action for declaratory judgment to seek a determination that "(i) neither the June 7 Resolution nor the September 6 Resolution amended the Concession Agreement; (ii) by passing resolutions that purported to unilaterally set a completion date for the Golf Course Project, the Town breached the Concession Agreement; (iii) Defendants are estopped from arguing that the Town terminated the Concession Agreement for cause; and (iv) RC Recreation is entitled under the Concession Agreement, as amended by the First Amendment, to be compensated for the full value of the work it performed on the Golf Course Project." Plaintiff also seeks to recast the Tenth cause of action relating to its exercise of free speech and the Eleventh cause of action for denial of procedural due process in connection with the Stop Work Order. Finally, Plaintiff seeks to allege a cause of action for breach of the Concession Agreement on several grounds, including terminating the agreement for pretextual reasons, failing to compensate Plaintiff for the value of its work, and unreasonably withholding consent to assign the agreement.

Asserting that law of the case bars RC's breach of contract claim, Defendants primarily oppose the proposed amendment on the ground that the Court "already determined that the Town

had an absolute right to terminate the plaintiff, whether the termination occurred due to a material breach or a termination at will”, and dismissed RC’s cause of action for anticipatory breach and breach of the covenant of good faith and fair dealing. Defendants then assert that “[t]he only remaining issue is whether the Town’s termination for cause was properly based, and if not, whether and how much damages the plaintiff is owed.”³ *Id.*

Law of the case bars Plaintiff’s claims for breach of the Concession Agreement. The Court held that the Town terminated the Concession Agreement for cause for the reasons set forth in the Notice of Termination. The Court further held that Plaintiff could not succeed on its claim for anticipatory breach of the agreement or breach of the implied covenant of good faith and fair dealing because the Town had the absolute right to terminate “at will” in any event. Therefore, the Court granted Defendants’ motion to dismiss Plaintiff’s contract claim.

This Court is bound by the prior determination in this case on Defendants’ motion to dismiss. Pursuant to the doctrine of law of the case, “a determination on the merits of the same point within the same litigation binds [those] parties and also Judges of coordinate jurisdiction.” *Roll v Roll*, 143 AD2d 651, 652 [2nd Dept 1988] (quoting *Jones v State of New York*, 79 AD2d 273, 275 [4th Dept 1981]). Plaintiff’s proposed causes of action for breach of contract and related declaratory relief are based upon the same arguments and facts as its prior claim for anticipatory breach. Consequently, the prior determination constitutes law of the case and prevents RC from asserting claims for breach of contract and declaratory judgment in its proposed amendment to its pleadings. *EDP Hosp. Computer Sys., Inc. v Bronx-Lebanon Hosp. Ctr.*, 63 AD3d 665, 666 [2nd Dept 2009] (citing *J-Mar Serv. Ctr., Inc. v Mahoney, Connor & Hussey*, 45 AD3d 809 [2007]; *Quinn v Hillside Dev. Corp.*, 21 AD3d 406, 407 [2005]); see also *Mass OP, LLC v Principal Life Ins. Co.*, 99 AD3d 870, 871 [2nd Dept 2012]. Plaintiff’s proposed Second cause of action for declaratory judgment is barred by the Court’s decision on the motion to dismiss because it seeks a declaration that the Town breached the Concession Agreement, that it is estopped from arguing that it terminated the agreement for cause and that Plaintiff is entitled to compensation under the at will provision of the First Amendment to the Concession Agreement, notwithstanding that the Town terminated principally for cause, and only in the alternative at will.

³ This statement by Defendants is perplexing and inconsistent with their contention that RC has no claim for breach. It may be attributed to the statement in the Decision and Order on the motion to dismiss as to damages RC may be entitled to for its equipment.

RC's motion to amend to restate its free speech and procedural due process claims is granted. Defendants oppose amendment of these causes of action, both of which survived their motion to dismiss. Defendants assert that the free speech claim was voluntarily dismissed by RC in its federal court action. RC responds that the cite in the pleading to 42 USC § 1983 was a typographical error; they intended to plead their claim only under the NY State Constitution. Defendants cannot argue that RC's procedural due process claim is devoid of merit when the Court allowed the cause of action to proceed. RC is directed to file an Amended Complaint which alleges only these two causes of action (minus the inclusion of 42 USC § 1983).

SUMMARY

It is hereby,

ORDERED that RC's motion to convert the action to a civil action is denied; and it is further

ORDERED that RC's motion for leave to file an Amended Complaint is denied as to the First and Second causes of action in the proposed Amended Complaint and granted as to the proposed Third (as corrected) and Fourth causes of action. RC shall submit an Amended Complaint which pleads only the causes of action for (1) retaliation for the exercise of its free speech rights under the NY State Constitution; and (2) denial of procedural due process within 10 days of the date of this Decision and Order.

Dated: November 13, 2024
White Plains, New York

ENTER


HON. PAUL I. MARX, J.S.C.