

Buteau v Delucia

2016 NY Slip Op 32669(U)

September 6, 2016

Supreme Court, Saratoga County

Docket Number: 2014-2488

Judge: Richard E. Sise

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This opinion is uncorrected and not selected for official publication.

PRESENT: HON. RICHARD E. SISE
Acting Justice
STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

PETER A. BUTEAU,

Plaintiff,

DECISION AND ORDER

Index No.: 2014-2488
RJI No.:45-1-2014-1849

-against-

THEODORE F. DELUCIA and KAREN A. DELUCIA,
Defendants.

(Supreme Court, Saratoga County, Motion Term)

APPEARANCES: The Law Office of Kyran D. Nigro
Attorney for Plaintiff
491 Broadway
Saratoga Springs, New York 12866

Kurz & Associates, LLC
(By: Michael Kurz, Esq.)
Attorneys for Defendants
2212 Western Avenue
Guilderland, New York 12084

Sise, J.

Plaintiff brought this action seeking a declaratory judgment defining the limits of defendants' rights to the use of an easement on property owned by plaintiff and enjoining any use outside the determined limits. The matter is scheduled for trial and plaintiff has moved to preclude defendants from introducing at trial submissions made to, and the minutes of certain meetings of, the Town of Malta Zoning Board of Appeals (ZBA). Defendants have cross-moved to compel plaintiff to provide, in response to a demand for disclosure, copies of the documents

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on which plaintiff will rely to establish his claim that defendants' use of the easement is limited to ingress and egress as well as responses to certain interrogatories regarding this issue. Defendants have also requested that plaintiff be directed to appear for a further deposition and answer questions regarding the documents.

The ZBA submissions and meeting minutes, which plaintiff seeks to preclude, reflect, as is relevant to the motion, comments made to the ZBA with respect to the impact of an application for area variances arising from proposed lot line adjustments to properties on Lake Avenue adjacent to Saratoga Lake. The comments were made by plaintiff's counsel in this action, who at the time represented the applicant in the ZBA proceeding. The applicant was seeking approval for lot line adjustments in anticipation of selling a portion of his property fronting Saratoga Lake to neighboring property owners including plaintiff. Other neighboring property owners raised some concern about the impact of the lot line adjustments and sales on their access rights to Saratoga Lake via an easement that crossed portions of the property intended for sale. The submissions and comments plaintiff seeks to preclude essentially indicated that existing rights of access and easements would not be extinguished or diminished if the lot line adjustments were approved and the sales proceeded.

The underlying issue in this action concerns the extent and nature of defendants' rights in the property deeded to plaintiff. Plaintiff maintains that defendants' rights are limited to an easement for ingress-egress only. Defendants contend that since prior to the year 2000 they have maintained, in a continuous, open and notorious manner under claim of right, and for a period in excess of ten years, a dock, table and other improvements and have thereby obtained either a fee interest or an easement in and to the property at issue. Inasmuch as resolution of the action requires a determination of rights that existed prior to the submissions, and counsel's statements, made to the ZBA in 2012, the submissions and comments are irrelevant and lack any probative force. Consequently, the motion to preclude their introduction should be granted.

During the course of disclosure proceedings defendants served a demand on plaintiff to produce documents which define or limit the types of uses and activities that are permissible under the easement. In addition, defendants served interrogatories which request that plaintiff identify the specific documents which plaintiff asserts define, limit, prohibit, establish or control

defendants' use of the easement. Plaintiff responded by referring defendants to the parties' chains of title and the deeds of other property owners living in the subdivision.

The court has broad discretion in determining whether information sought by a party is material and necessary to the prosecution or defense of an action and the test to be employed is one of usefulness and reason (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). Here, plaintiff's claim is, by his own admission, based on deeds to various property owners, thus making the information sought material and necessary to a defense of the action. Plaintiff argument that because the deeds are a matter of public record he is not required to produce them is supported by case law (*see Blagrove v Cox*, 294 AD2d 526 [2d Dept 2002]). However, plaintiff offers no basis for refusing to provide the information in a response to the interrogatories and as it concerns a fundamental issue in the case, the documents should be identified, though a further deposition of plaintiff regarding the documents is not necessary.

Accordingly, it is

ORDERED, that defendants are precluded from offering into evidence at trial documents submitted to the Town of Malta Zoning Board of Appeals, and the minutes of the meetings of that body, concerning the application by Louis J. Farone , Jr. for area variances made in connection with lot line adjustments to parcels of real property in the Silver Bay subdivision and it is further


ORDERED, that plaintiff is directed to provide a response to the interrogatories propounded by defendants concerning the documents on which plaintiff will rely to establish the limits of defendants' easement.

This constitutes the decision and order of the Court. The original decision and order is returned to the attorney for plaintiff. A copy of the decision and order and the supporting papers have been delivered to the County Clerk for placement in the file. The signing of this decision and order, and delivery of a copy of the decision and order shall not constitute entry or filing under CPLR 2220.

Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

SO ORDERED.
ENTER.

Dated: Albany, New York
September 6, 2016

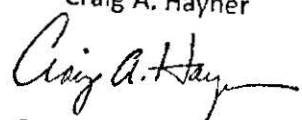

Richard E. Sise
Acting Supreme Court Justice

Papers Considered:

1. Notice of Motion dated August 9, 2016;
2. Affidavit of Kyran D. Nigro dated August 9, 2016 with Exhibits A-F attached;
3. Affirmation of Michael Kurz dated August 18, 2016 with Exhibits 1-4 attached;
4. Notice of Motion dated August 10, 2016;
5. Affirmation of Michael Kurz dated August 10, 2016 with Exhibits A-I attached;
6. Affirmation of Kyran D. Nigro undated;
7. Affidavit of Peter A. Buteau dated August 22, 2016;
8. Affirmation of Michael Kurz dated August 19, 2016.

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Craig A. Hayner

Saratoga County Clerk