Guazzoni v Village of Tuxedo Park
2018 NY Slip Op 33689(U)
September 19, 2018
Supreme Court, Orange County
Docket Number: EF000551-2018
Judge: Catherine M. Bartlett
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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

---x

CLAUDIO GUAZZONI and ROBERT ZGONENA,

Plaintiffs,

-against-

VILLAGE OF TUXEDO PARK, DAVID MCFADDEN, MAYOR, VILLAGE OF TUXEDO PARK, and JOHN LEDWITH, as a necessary party,

Defendants.

---x

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.

Index No. EF000551-2018
Motion Date: July 24, 2018

The following papers numbered 1-4 were read on Defendants' motion for "renewal" of this Court's prior order denying their motion pursuant to CPLR §3211(a)(1) for an order dismissing Plaintiffs' Complaint:

Notice of Motion - Affirmation / Exhibits 1-2

Affirmation in Opposition 3

Reply Affirmation / Exhibit - Affidavit / Exhibit 4

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

Factual Background

On September 13, 2017, the Board of Trustees of the defendant Village of Tuxedo Park (the "Village") adopted a Resolution stating as follows:

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> Resolved that the Village enter into a Consulting Agreement with John Ledwith under which Mr. Ledwith would provide consulting services to the Village, such agreement to be substantially in the form reviewed by the Trustees, together with such changes as may be reviewed by counsel, and approved by the Mayor and Trustee Gluck.

Accordingly to Paul Gluck, a duly elected member of the Village Board of Trustees, Mayor McFadden executed a consultant agreement with John Ledwith in accordance with the September 13, 2017 Resolution of the Village Board.

The Complaint

On January 19, 2018, Plaintiffs Claudio Guazzoni and Robert Zgonena commenced this action, asserting two causes of action.

The first cause of action seeks a declaratory judgment that the Village's consulting agreement with John Ledwith is null and void because executed by defendant Mayor David McFadden in violation of New York law. The Complaint alleges:

> 17. Village Law prescribes the duties of the Mayor and the Village Board of Trustees.
>
> 18. A Village Mayor is not authorized to himself enter into any employment agreement which binds the village to expend public funds.
>
> 19. The terms of any such agreement must be approved by the Board of Trustees which is responsible for the management of village property and finance, V[illage] L[aw] Section 4-412, and only upon that occasion may the Mayor sign any such agreement.
>
> 20. The consulting agreement for defendant John Ledwith is a legal nullity, having never been appropriately approved by the Village Board of Trustees.
>
> 21. Defendant McFadden acted in an *ultra vires* manner and contrary to law in signing said consulting agreement and approving monthly payments in the sum of $5,371.74 to defendant Ledwith and other benefits set forth therein.

The second cause of action seeks an order pursuant to Village Law §4-412(12) requiring defendant McFadden to repay the Village all sums paid to John Ledwith under the consulting

agreement. The Complaint alleges:

> 23. Any person who assumes to create a liability for a village or approves the expenditure of village funds without specific authorization to do so is personally liable for the sum so expended. *See,* VL 4-412(12).
>
> 24. Since September 25, 2017, defendant Ledwith has been paid the sum of $5371.74 / month plus at least an additional sum of $800 / monthly from village funds based upon a document signed by McFadden without specific authorization or approval by resolution of these terms.
>
> 25. Said payment had been occasioned by and only by the *ultra vires* actions of defendant McFadden which actions were contrary to law and specifically unauthorized.

Defendants' Prior Motion to Dismiss

Defendants previously moved pursuant to CPLR §3211(a) to dismiss Plaintiffs' Complaint on a variety of grounds, including the purported ground that documentary evidence conclusively established that Mayor McFadden was legally authorized to sign the consulting agreement on behalf of the Village. By prior Decision and Order dated June 12, 2018, the Court denied this aspect of Defendants' motion.

The Court construed the September 13, 2017 Resolution as follows:

> The Resolution consists of a single sentence with two operative provisions: the Board thereby (1) authorized the Village to enter into a Consulting Agreement with John Ledwith "*substantially* in the form reviewed by the Trustees", and concomitantly (2) delegated authority to incorporate "such changes as may be reviewed by counsel, and approved by the Mayor and Trustee Gluck." Reading and construing these two provisions of the Resolution together so as to harmonize them and give effect and meaning to the entire Resolution and each part thereof, the Court concludes that by its Resolution, the Village Board intended to approve the *substance* of the Agreement while delegating limited power to approve, not any and all changes, but only such as – upon review by legal counsel for compliance with law, including the terms of the Resolution – did not alter the *substance* of the Board-approved Agreement. Contrary to Plaintiffs' suggestion (Sussman Aff. ¶30), the Resolution cannot reasonably be read as having conferred authority on the Mayor and Trustee Gluck to alter the Agreement however they liked, as such a construction would wholly negate the Board's explicit directive that the Agreement "be substantially in the form reviewed by the Trustees."

The Court then held that the Resolution, thus construed, fully comports with New York law:

> ...the substance of the September 13, 2017 Resolution comports with both the letter and the spirit of New York law. Nothing in the Village Law, or elsewhere, so far as the Court can determine, prevented the Village Board from exercising its plenary authority with respect to Village contracting by (1) approving a Consulting Agreement "*substantially* in the form reviewed by the Trustees", and concomitantly (2) delegating authority to incorporate "such changes as may be reviewed by counsel, and approved by the Mayor and Trustee Gluck." By its Resolution, the Village Board approved the *substance* of the Agreement and effectively constituted the Mayor and Trustee Gluck an *ad hoc* "commission" (within the meaning of the delegation provision Village Law §4-412[1][a]) with limited power to approve only such changes as did not alter the *substance* of the Board-approved Agreement. The Board having approved the substance of the Consulting Agreement, nothing in the Village Law (unlike the Town Law) required the Board to further approve non-substantial changes implemented by its constituted delegates before the Agreement's execution by the Mayor.

However, the Court found that Defendants' documentary evidence did not utterly refute the Plaintiffs' allegations and conclusively establish their defense as a matter of law:

> Defendants proffer the September 13, 2017 Resolution, but not the Consulting Agreement "in the form reviewed by the Trustees." Additionally, Trustee Paul Gluck merely avers in conclusory fashion that defendant David McFadden executed a Consulting Agreement "in accordance with the September 13, 2017 Resolution," without even alluding to the question whether, or in what respect(s), the Board-approved Agreement was changed before it was executed by Mr. McFadden. As a result, it cannot be determined on the record before the Court whether those changes, if any, accorded with the substance of the Board-approved Agreement, as the Resolution required. Defendants also failed to establish whether any such changes were reviewed by legal counsel and approved by Mr. Gluck, as required by the Resolution.
>
> Therefore, Defendants' evidence does not conclusively rebut Plaintiffs' allegation that Mr. McFadden acted in an *ultra vires* manner and contrary to law in signing the Consulting Agreement. Consequently, their motion to dismiss the Complaint on documentary evidence pursuant to CPLR §3211(a)(1) is denied.

Defendants' Motion For "Renewal"

Defendants now move for "renewal" of this Court's Decision and Order of June 12, 2018. Defendants proffer evidence that on June 20, 2018, after the issuance of the Court's Order, the

Village Board enacted a Resolution ratifying the consulting agreement with John Ledwith. Defendants contend that this post-decision ratification of the consulting agreement constitutes "new facts not offered on the prior motion that would change the prior determination" within the meaning of CPLR §2221(e)(2).

Legal Analysis

Defendants' motion is procedurally improper.

CPLR §3211(e) expressly provides that "a party may move on one or more of the grounds set forth in subdivision (a), and no more than one such motion shall be permitted." "The single motion rule prohibits parties from making successive motions to dismiss a pleading." *Bailey v. Peerstate Equity Fund, LP,* 126 AD3d 738, 739 (2d Dept. 2015); *Ramos v. City of New York,* 51 AD3d 753, 754 (2d Dept. 2008). "The purpose of the single-motion rule is not only to prevent delay before answer [cit.om.], but also to 'protect the pleader from being harassed by repeated CPLR 3211(a) motions' [cit.om.]." *Oakley v. County of Nassau,* 127 AD3d 946, 947 (2d Dept. 2015). Thus, "[t]he rule bars both repetitive motions to dismiss a pleading pursuant to CPLR 3211(a), as well as subsequent motions to dismiss that pleading pursuant to CPLR 3211(a) that are based on alternative grounds." *Bailey v. Peerstate Equity Fund, LP,* 126 AD3d at 739.

What Defendants label a motion for "renewal" is in fact a thinly veiled attempt to evade CPLR §3211(e)'s prohibition of successive motions to dismiss a pleading on alternative grounds. On their original motion, Defendants asserted, unsuccessfully, that documentary evidence conclusively established that Mayor McFadden was legally authorized to sign the Ledwith consulting agreement on behalf of the Village. The newly proffered evidence of the Village Board's *post hoc* Resolution to ratify that agreement does not bear on the question whether

Mayor McFadden was authorized to sign it in the first place; consequently, it would not alter the Court's prior determination in any way; and therefore, Defendant's motion may not properly be called one for "renewal." *See,* CPLR §2221(e)(2). It is, rather, a successive motion for dismissal on an alternative ground, which is prohibited by CPLR §3211(e).

Therefore, Defendants' purported motion for "renewal" of this Court's June 12, 2018 Decision and Order must be denied. Defendants remain free, of course, to assert the June 20, 2018 ratification of the consulting agreement in their answer to Plaintiff's complaint, and to move for summary judgment on that basis. *See, Oakley v. County of Nassau, supra. See also, Imburgia v. City of New Rochelle,* 223 AD2d 44, 48 (3d Dept. 1996); *Village of Lansing v. Triphammer Development Company Inc.,* 193 AD2d 919, 921 (3d Dept. 1993).

It is therefore

ORDERED, that Defendant's motion for renewal is denied.

The foregoing constitutes the decision, order and judgment of the Court.

Dated: September 19, 2018 ENTER
Goshen, New York

HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE