Matter of Clover/Allen's Creek Neighborhood Assn. LLC, v M&F, LLC
2018 NY Slip Op 33710(U)
July 5, 2018
Supreme Court, Monroe County
Docket Number: Index No.: E2018000937
Judge: Daniel J. Doyle

STATE OF NEW YORK
SUPREME COURT MONROE COUNTY

In the Matter of the Application of

CLOVER/ALLEN'S CREEK NEIGHBORHOOD ASSOCIATION LLC,

Petitioner-Plaintiff,

Decision, Order, and Judgment

-against-

M&F, LLC, DANIELE SPC, LLC, MUCCA MUCCA LLC, MARDANTH ENTERPRISES, INC., M&F, LLC, DANIELE SPC, LLC, MUCCA MUCCA LLC, MARDANTH ENTERPRISES, INC., COLLECTIVELY DOING BUSINESS AS DANIELE FAMILY COMPANIES, TOWN OF BRIGHTON, NEW YORK, TOWN BOARD OF THE TOWN OF BRIGHTON, NEW YORK, NMS ALLENS CREEK INC., and ROCHESTER GAS AND ELECTRIC COMPANY,

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and any persons or entities found to have an interest in the property subject to this action but not yet named.

For a Judgment Pursuant to New York CPLR Article 78, for a Declaratory Judgment pursuant to New York CPLR 3001, and for a judgment to quiet title pursuant to Real Property Actions and Proceedings Law Article 15

Respondents-Defendants.

Appearances:

Laurie Styka Bloom, Esq., **Nixon Peabody, LLP**, for the Petitioner-Plaintiff.
Warren B. Rosenbaum, Esq., **Woods Oviatt Gilman LLP** for Respondents-Defendants M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Mardanth Enterprises, Inc.
John A. Mancuso, Esq., **Harris Beach PLLC**, for Respondents-Defendants Town of Brighton and Town Board of the Town of Brighton

Daniel J. Doyle, J.

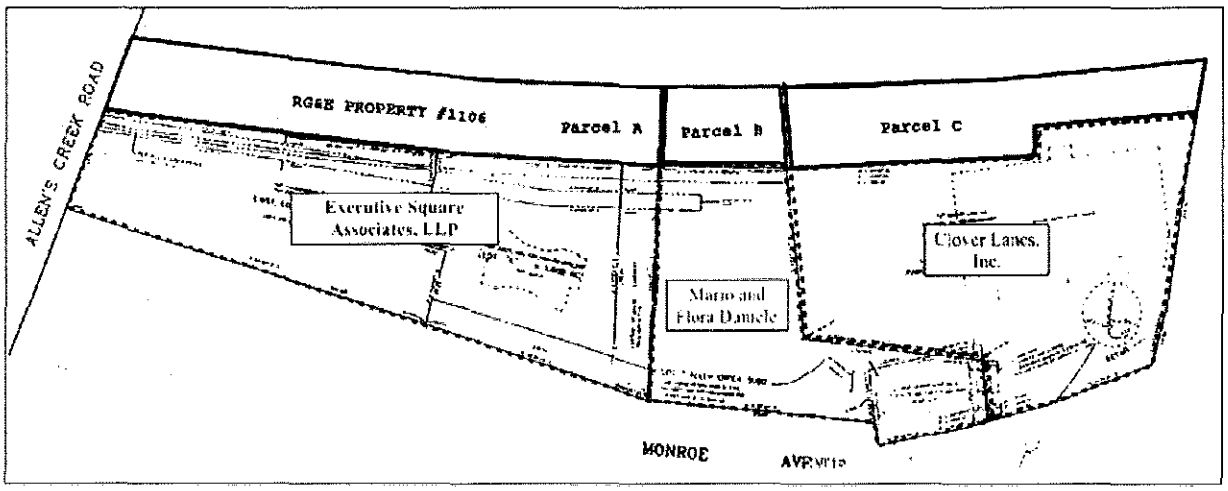
Petitioner-Plaintiff Clover/Allen's Creek Neighborhood Association LLC is a limited liability corporation organized and existing under the laws of the State of Delaware and is authorized to do business in New York. It is comprised of residential neighbors in the Clover Street and Allens Creek Road area in and around the Town of Brighton, New York (the "Association"). According to the Association, its purposes include protecting, maintaining and promoting the property interests of its members; ensuring that development in the neighborhood complies with applicable zoning regulations; protecting the recreational trails in the area; and otherwise providing for the health, safety and welfare of the residents in the neighborhood

The Association commenced this combined Article 78, Declaratory Judgment and Quiet Title Action, which arises out a project located at 2740/2750/2800 Monroe Avenue ("The Project") in the Town of Brighton. The Petition/Complaint alleges four causes of action: (1) Quiet Title under RPAPL Article 15; (2) a violation of the Public Trust Doctrine; (3) a violation of Open Meetings Law § 103[e]; and (4) Equitable Estoppel.

The Project is proposed to be situated on an approximately 10.1 acre site on a site comprising several parcels owned by Respondents-Defendants M&F, LLC,

Daniele SPC, LLC and Mucca Mucca LLC, which comprise the Daniele Family of Companies "Developer" (collectively, the "Developer"). Adjoining the Project Site to the northeast is property owned by Respondent-Defendant NMS Allen's Creek Inc. ("NMS").

At issue in this case, the Project proposes improvements to a pedestrian pathway running between Clover Street and Allen's Creek Road. This path is located on land previously owned by Respondent-Defendant Rochester Gas & Electric Corporation ("RG&E"). In 1997, a portion of the RG&E Property was subdivided into three lots and transferred by RG&E to Executive Square Associates, LLP (the predecessor-in-title to NMS), Mario Daniele and Flora Daniele, and Clover Lanes, Inc., (the predecessors-in-title to The Developer) the owners whose property abutted the RG&E Property. The three subdivided lots are identified as "Parcel A," "Parcel B," and "Parcel C" in instrument survey:



In connection with the transfers, RG&E granted the parties a 10- foot wide "non-exclusive permanent easement and right of way" over a portion of the RG&E Property for access to Allen's Creek Road (the "Access Easement").

Later, by deeds each dated June 30, 1997, RG&E then conveyed the fee interest in Parcel A, Parcel B and Parcel C to Executive Square Associates, LLP, Mario Daniele and Flora Daniele, and Clover Lanes, Inc., respectively. In the deeds, RG&E reserved certain permanent rights in its utility facilities which included: (i) title to any and all of its utility facilities and equipment; and (ii) a permanent easement over and under the Premises . . . in order to use, maintain, repair, replace and upgrade the Utility Facilities and to construct additional electric, gas, communications and similar facilities on the Premises, together with customary property rights (including the right to trim trees) determined by RG&E to be necessary or reasonably desirable.

Beginning in 2001, the Respondents-Defendants conveyed easements to the Town of Brighton ("The Town Easement"). The Town Easement consists of a 10-foot wide easement in the former RG&E Property (coterminous with the location of the Access Easement) for the maintenance of a pedestrian pathway. The Easements vary in certain non-material respects, but in sum and substance grant the Town non-exclusive rights - in common with the various

property owners - to maintain a pedestrian pathway for public use (see Mancuso Aff. ¶¶12-17). The Town accepted the Easements "subject to covenants, easements and restrictions of record" (see Mancuso Aff. ¶16), which would include the Access Easement and RG&E's reserved easement.

Thus, the ownership interests can be summarized as follows: the Developer and NMS are the fee owners of the relevant portions of the property containing the pedestrian pathway subject to the following rights:

(i) the Developer and NMS hold a 10-foot wide "non-exclusive permanent easement and right of way" over a portion of the RG&E Property for access to Allen's Creek Road;

(ii) RG&E holds an easement in the former RG&E Property with respect to its utility facilities; and

(iii) the Town holds a series of 10-foot wide non-exclusive easements in common with others over a portion of the Property to maintain a pedestrian pathway for public use.

The Association contends that the Town Easement is now part of a recreational trial known as the Auburn Trail, which runs from The City of Rochester to the Erie Canal in Pittsford. The Association also contends that the Developers have misappropriated the Town Easement for their own private use

including (1) paving over it and using it for vehicular ingress/egress to and from the Developer's nearby properties; (2) converting a portion of it into a parking lot; and (3) gating and padlocking one end.

As it pertains to the Open Meetings Law violation, the Town held a meting of the Town Board on January 24, 2018 to consider the project. Under consideration at that meeting was a resolution to approve the Final Environmental Impact Statement ("FEIS"). The FEIS is 511 pages long and includes a traffic study as an appendix that is 76 pages long. The Association claims that the Town did not put the FEIS up on its website until hours before its meeting on January 24, 2018, which then approved the FEIS.

Pending before the Court are pre-answer motions made by the Town and by the Developer seeking to dismiss the Petition/Complaint in its entirety pursuant to CPLR 3211[a][1] (defense founded upon documentary evidence), CPLR 3211[a][3] (standing); CPLR 3211[a][7] (failure to state a cause of action); and CPLR 7804[f] (objections in point of law).

A. The applicable standards

1. A defense founded upon documentary evidence under CPLR 3211[a][1]

CPLR 3211(a) (1) allows a motion to dismiss a cause of action on the basis

that a defense is founded on documentary evidence. In order to succeed on a motion to dismiss pursuant to CPLR 3211(a)(1), the documentary evidence that forms the basis of the defense must resolve all factual issues as a matter of law and conclusively dispose of the Plaintiff's claim (*Wells Fargo Bank, N.A. v Zahran*, 100 AD3d 1549, 1550 [4th Dept 2012])).

2. Standing under CPLR 3211[a][3]

Standing is a threshold determination which is not bestowed simply because the matter sought to be adjudicated is one of important public concern (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 772–773[1991]). Instead, standing requires the existence of an injury in fact—an actual legal stake in the matter being adjudicated" (*Brown v County of Erie*, 60 AD3d 1442, 1444 [4th Dept 2009]). A representative organization can have standing to sue if "at least one of its members would have standing to sue, that it is representative of the organizational purposes it asserts and that the case would not require the participation of individual members" (*Hartford/N. Bailey Homeowners Ass'n ex rel. Pasztor v Zoning Bd. of Appeals of Town of Amherst*, 63 AD3d 1721, 1722 [4th Dept 2009]). It is petitioners' burden to establish standing (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d at 769).

3. *Failure to state a cause of action under CPLR 3211[a][7]*

CPLR 3211(a)(7) authorizes the summary dismissal of a complaint for failure to state a cause of action. The Court of Appeals has held that "the criterion is whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). On a motion made pursuant to CPLR 3211[a][7], the Court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). In determining a motion to dismiss under CPLR 3211[a][7], The Fourth Department has held that the Court may consider under CPLR 3211[c] evidentiary material submitted on a motion to dismiss for the limited purpose of assessing the facial sufficiency of a complaint, but may only grant dismissal if the evidentiary material establishes "*conclusively* that plaintiff has no cause of action" (*Liberty Affordable Hous., Inc. v Maple Ct. Apartments*, 125 AD3d 85, 89 [4th Dept 2015] (emphasis in the original)).

B. The Quiet Title Cause of Action

RPAPL § 1501 permits an action to quiet title by a person that "claims an estate or interest in real property." Under RPAPL § 240[4] an interest in real property includes " every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent." An action to quiet title under RPAPL Article 15 has its own pleading requirements, which include the requirement that a plaintiff plead its "estate or interest in the real property, the particular nature of such estate or interest, and the source from or means by which the plaintiff's estate or interest immediately accrued to him" (RPAPL § 1515[1][a]).

Here, the Association has not alleged that it has "an interest in the real property" at issue here, thus, it has failed to state a cause of action under CPLR 3211[a][7]. Moreover, in reviewing the documentary evidence before the Court, it is clear that they do not have a cause of action as the Association is not in the chain of title for the property.

Where the Plaintiff is a stranger to title, it lacks standing to maintain a cause of action to compel a determination of title to real property (see e.g. *LaBarbera v Town of Woodstock*, 29 AD3d 1054, 1055 [3d Dept 2006]). Here, the Plaintiff is not in title in the property in dispute as it neither has a fee interest or

an easement interest. The fact that the Town Easement refers to "the public" and that the Association is comprised of constituent members of the public who use the easement, is, at best, a license to use the Town Easement. A license does not create an interest in real property as that term is defined in RPAPL § 240[4] (see *Senrow Concessions, Inc. v Shelton Properties, Inc.*, 10 NY2d 320, 325 [1961]).

The Association's reliance upon *Nassau Point Prop. Owners Ass'n, Inc. v Tirado*, 29 AD3d 754 [2d Dept 2006] is misplaced. In that case, the homeowner's association had standing by virtue of the fact that at least one of its constituent members had standing to sue because of their ownership interests in the property in question. In this case, the Association lacks the standing to maintain the Quiet Title claim because it neither has standing in its own right, nor does any constituent member possess the standing to maintain the action. Therefore, the Respondents are entitled to dismissal of the Quiet Title cause of action pursuant to CPLR 3211[a][7], CPLR 3211[a][3] and CPLR 3211[a][1].

C. The Application of the Public Trust Doctrine

The Court of Appeals has recognized that "the public trust doctrine is ancient and firmly established" (*Avella v City of New York*, 29 NY3d 425, 431 [2017]). Under the public trust doctrine "parkland is impressed with a public

trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes" *Friends of Van Cortlandt Park v City of New York*, 95 NY2d 623, 630 [2001]).

Here, the Association asserts that as the easement is for recreational purposes and as it is a part of the Auburn Trail, it is parkland for the purposes of the public trust doctrine whether by implied or express dedication.

However, before reaching the issue of whether the easement is parkland by either express or implied dedication, the Court must examine the threshold issue of the Town's interest in the easement. The underpinning of the public trust doctrine is that the municipality holds title to public parkland in trust for the State, thus the necessity for an act of the Legislature. Courts have held that where the municipality holds a defeasible interest in the property in question, the public trust doctrine is not applicable.

For example in *Grant v Koenig*, 39 AD2d 1000 [3d Dept 1972], the City of Kingston sought to abandon the use of a park situated on property it acquired in fee simple subject to a condition subsequent. The Third Department held that the public trust doctrine did not apply because "the land acquired by the city for public park purposes was conveyed subject to a condition subsequent it is not under the control of the Legislature" (*Grant v Koenig*, 39 AD2d at 1000). And

again in *Rappaport v Vil. of Saltaire*, 130 AD3d 930 [2d Dept 2015], the Second Department held that where the Village of Saltaire held property in fee simple with a reversionary interest, the public trust doctrine did not apply to the Village's later agreement to remove the restrictive covenant from the property. One court explained the rationale for why the public trust doctrine does not apply to defeasible property held by a municipality:

> Rather, the rule is inapplicable to donated property subject to a possibility of reverter.
>
> The rule is intended to protect the public's interest in the property by preventing local governments from diverting it from public use. When a donor retains a possibility of reverter, that also restrains the donee local government; if the donee violates the terms of the gift, the donee loses the property completely. The property reverts to the donor, who can use it for any purpose, thereby depriving the donee of title and the public of any use. It would not protect the public's interest in the property to require the Legislature to consider a proposed use if the approval and conveyance only were to effectuate return of title to the private donor (*Landmark West! v City of New York*, 9 Misc 3d 563, 573 [Sup Ct 2005]

Here, the Town does not own the property in fee simple. Rather, it holds an easement to the property in question. Further, the Town holds that easement subject to the easements held by the other parties to this action. The Town does not hold title in fee simple to the property in question, thus it cannot be said that the Town holds the property in trust for the State. Like the conditional fee simple interests in *Grant*, *Rappaport and Landmark West*, the easement here can be subject

to divestiture (see e.g. *Stone v Donlon*, 156 AD3d 1308, 1309 [3d Dept 2017] (easement extinguished by abandonment)).[1] The fact that the Town Easement is "perpetual" in nature and was conveyed to a subdivision of the State does not mean that the Town cannot be divested of the easement in the future. For example, in *People v Byrneses-On-Hudson, Inc.*, 226 AD2d 353, 354 [2d Dept 1996], the State of New York was granted an easement by the defendant for a limited purpose and then ceased to use the easement for that limited purpose. The Second Department held that the State abandoned the easement and, therefore, lost title to it.

Though the Fourth Department has not ruled on this issue, the Court is bound to apply the law of the Second Department's decision in *Rappaport* and the Third Department's decision in *Grant* (*Mountain View Coach Lines, Inc. v Storms*,

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[1]After oral argument in this matter, counsel for the Association submitted a letter containing additional argument. Counsel argued that the public trust doctrine can apply to leaseholds and provided two examples of where the City of Salamanca sought the approval to discontinue the use as parklands property it held as a leasehold (see (L 1958, ch 771; L 1998, ch 584). In the unique case of the City of Salamanca, most of the City of Salamanca is situated upon the Allegany Indian Reservation and the entirety of that land is held as a freehold lease (*City of Salamanca v County of Cattaraugus*, 245 AD2d 1058, 1059 [4th Dept 1997]). Whatever the reason for the aforementioned legislative enactments, it cannot be said that, in those instances, the City of Salamanca held its land in trust for the State of New York when, in fact, the land in question is owned by the Seneca Nation of Indians under the guardianship of the United States (*United States v City of Salamanca*, 27 F Supp 541, 545 [WDNY 1939]).

102 AD2d 663, 664 [2d Dept 1984]) and hold that the public trust doctrine is inapplicable.

As the Association sought declaratory relief under CPLR 3001 seeking a declaration on the applicability of the public trust doctrine, the Town and the Developer are not entitled to dismissal of the Second Cause of Action; rather, they are entitled to a declaration that the public trust doctrine does not apply to the Town Easement (see *Rowe v Town of Chautauqua*, 84 AD3d 1728, 1729 [4th Dept 2011]).

D. Open Meetings Law § 103[e]

In its Verified Petition, the Association claims that the Town committed a violation of Open Meetings Law § 103[e] when it posted the FEIS and traffic study "hours" before the January 24, 2018 meeting at which the Town Board adopted the FEIS.

The purpose of New York's open meeting requirement is to ensure that "the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials" (Public Officers Law § 100). Because of this, the Court of Appeals has held that "the provisions of the Open Meetings Law are to be liberally

construed in accordance with the statute's purposes" (*Gordon v Vil. of Monticello, Inc.*, 87 NY2d 124, 127 [1995]).

> Open Meetings Law § 103[3] provides in pertinent part:
>
> If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting.

The Association interprets this statute to require the Town to post the FEIS and the traffic study as soon as practicable, and that the posting of several hundred pages of material on its website within hours prior to the meeting constituted a violation of Open Meetings Law 103[e].

It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature and where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used (*Patrolmen's Benev. Ass'n of City of New York v City of New York*, 41 NY2d 205, 208 [1976]). The Court of Appeals has said that "the clearest indicator of legislative intent is the statutory text" and, therefore " the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583 [1998]).

Here, the only requirement imposed by the text of the statute is that records shall be posted on the website **prior to the meeting**. There is nothing ambiguous about the statute. There is no time period imposed by the statute other than the material should be published "prior to the meeting." The Court's function is:

> to enforce statutes, not to usurp the power of legislation, and to interpret a statute where there is no need for interpretation, to conjecture about or to add to or to subtract from words having a definite meaning, or to engraft exceptions where none exist are trespasses by a court upon the legislative domain (*Gawron v Town of Cheektowaga*, 117 AD3d 1410, 1412 [4th Dept 2014] quoting McKinney's Cons. Laws of N.Y., Book 1, Statutes § 76, Comment at 168)).

To interpret the statute as requiring that the Town post the records "as soon as practicable" would be improper as the Court "cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact' (*People v Hill*, 82 AD3d 77, 80 [4th Dept 2011]; see also McKinney's Cons. Laws of N.Y., Book 1, Statutes § 363). Further, the failure to the Legislature to include a time frame other than the direction of **prior** to a meeting is an indication that its exclusion was intended (*Pajak v Pajak*, 56 NY2d 394, 397 [1982] citing McKinney's Cons. Laws of NY, Book 1, Statutes, § 74)). To read the additional requirement that the agency would have to publish material online "as soon as practicable" prior to the meeting would

provide the courts of New York no meaningful guidepost for compliance other than the personal opinion of an individual justice reviewing an alleged Open Meetings violation.[2]

The conclusion that the Legislature intended on setting any other deadline other than "prior" to a meeting is evidenced by the inclusion of the proviso that the agency only had to publish materials on its website prior to a meeting "to the extent practicable as determined by the agency" - meaning, that should the agency find it not practicable to post the materials online, it was not required to do so.

As the Petition/Complaint alleges that the Town had a website, and that it posted all of the materials in question on its website prior to its meeting on January 24, 2018, it fails to state a cause of action for a violation of Open Meetings Law § 103[e]. Therefore, the motions to dismiss the Third Cause of Action should be granted pursuant to CPLR 3211[a][7].

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[2]Even if the Court were to apply the "as soon as practicable prior to the meeting" standard sought by the Petitioner, the Court would find that the Respondent Town of Brighton complied with that standard. When the Town employee responsible for posting to the website received all the materials, it took her approximately 1 hour and 19 minutes to post them. This posting occurred approximately 7 hours and 39 minutes prior to the meeting.

E. Equitable Esoppel

Estoppel rests "upon the word or deed of one party upon which another rightfully relies and so relying changes his position to his injury " and can be:

> imposed by law in the interest of fairness to prevent the enforcement of rights which would work fraud or injustice upon the person against whom enforcement is sought and who, in justifiable reliance upon the opposing party's words or conduct, has been misled into acting upon the belief that such enforcement would not be sought *Nassau Tr. Co. v Montrose Concrete Products Corp.*, 56 NY2d 175, 184 [1982]

Equitable estoppel "is in the nature of an extraordinary remedy that should be invoked sparingly and only under exceptional circumstances" (*Storey v Sum*, 151 AD2d 991, 991 [4th Dept 1989]). Although the doctrine of equitable estoppel may be applied against the State or a subdivision of the State, it will not be applied without a showing either a concealment of facts or the making of a false representation to it and that claimant relied thereon (see *Hueber Hares Glavin Partnership v State*, 75 AD2d 464, 468 [4th Dept 1980]).

Here, the Association has not established the requisite elements of equitable estoppel. Therefore, the Respondents are entitled to dismissal of the Quiet Title cause of action pursuant to CPLR 3211[a][7]and CPLR 3211[a][1].

F. Conclusion

Based upon the foregoing, it is hereby

ORDERED that the motion to dismiss made by Respondents-Defendants M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Mardanth Enterprises, Inc., and the motion to dismiss made by Respondents-Defendants Town of Brighton and Town Board of the Town of Brighton (collectively, "the moving parties") are **GRANTED IN PART**; and it is further

ORDERED that the First Cause of Action is DISMISSED against the moving parties pursuant to CPLR 3211[a][7], CPLR 3211[a][3] and CPLR 3211[a][1]; and it is further

ORDERED that the Third Cause of Action is DISMISSED against the moving parties pursuant to CPLR 3211[a][7]; and it is further

ORDERED that the Fourth Cause of Action is DISMISSED against the moving parties pursuant to CPLR 3211[a][7]and CPLR 3211[a][1] and it is further;

ORDERED that on the Third Cause of Action, the moving parties are entitled to a declaratory judgment in their favor; and it is further

ORDERED ADJUDGED AND DECREED that the public trust doctrine is inapplicable to the easements granted to the Town by the predecessors-in-title to M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Mardanth Enterprises, Inc.

F. Conclusion

Based upon the foregoing, it is hereby

ORDERED that the motion to dismiss made by Respondents-Defendants M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Mardanth Enterprises, Inc., and the motion to dismiss made by Respondents-Defendants Town of Brighton and Town Board of the Town of Brighton (collectively, "the moving parties") are **GRANTED**; and it is further

ORDERED that the First Cause of Action is DISMISSED against the moving parties pursuant to CPLR 3211[a][7], CPLR 3211[a][3] and CPLR 3211[a][1]; and it is further

ORDERED that the Third Cause of Action is DISMISSED against the moving parties pursuant to CPLR 3211[a][7]; and it is further

ORDERED that the Fourth Cause of Action is DISMISSED against the moving parties pursuant to CPLR 3211[a][7]and CPLR 3211[a][1] and it is further;

ORDERED that on the Second Cause of Action, the moving parties are entitled to a declaratory judgment in their favor; and it is further

ORDERED ADJUDGED AND DECREED that the public trust doctrine is inapplicable to the easements granted to the Town by the predecessors-in-title to M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Mardanth Enterprises, Inc.

Dated: July 5, 2018

The Honorable Daniel J. Doyle
Supreme Court Justice