

Village of Chester

47 Main Street

Chester, New York

845-469-2388

845-469-5999

Website: www.villageofchesterny.com

Mayor: John T. Bell

Village Clerk: Rebecca Rivera

Trustees: Christopher Battiato

Alan Battiato

Elizabeth A. Reilly

Brian J. Boone

For immediate release 6.21.18

CHALLENGE TO VILLAGE OF CHESTER SINGLE FAMILY ZONING DISMISSED BY APPELLATE COURT

Mayor Tom Bell of the Village of Chester, New York announced that a Court Challenge by BT Holdings to the Village's recently adopted Single Family Zoning District Amendment was rejected by the Appellate Division, Second Department in a Decision released yesterday.

Mayor Bell remarked, *“Each municipality should have the right to decide their own land use plan. I am very pleased that the Appellate Court has upheld that right to do so in our Village of Chester”*. The Village of Chester under the leadership of Mayor Bell's Administration enacted a Local Land Use Law that allowed for up to 120 single family homes to be built on land owned by BT Holdings. That Local Law also allowed for new technology businesses to be constructed on this property as a way to attract new commercial ratables. The landowner BT Holdings brought a challenge to this Local Law that the lower court did not dismiss. The Appellate Court ruled that the lower court should have dismissed that BT Holdings challenge to this 120 single family zoning district. An Attorney for the Village of Chester Dennis Lynch noted, *“Land use laws are to protect the interest of the residents and not promote the interests of developers. I am pleased the Appellate Court agreed with our legal arguments on that important municipal land use issue”*.

For further information contact Dennis Lynch, Esq., 845-353-2000 of Feerick Lynch MacCartney & Nugent, Esqs. with Offices in Rockland County and Orange County. A copy of the Appellate Court Decision is attached.

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Argued - February 13, 2018

ALAN D. SCHEINKMAN, P.J.
COLLEEN D. DUFFY
FRANCESCA E. CONNOLLY
LINDA CHRISTOPHER, JJ.

2017-02303

DECISION & ORDER

In the Matter of BT Holdings, LLC, petitioner/plaintiff-respondent, v Village of Chester, et al., respondents/defendants-appellants.

(Index No. 7318/16)

Feerick Lynch MacCartney & Nugent, PLLC, South Nyack, NY (Mary E. Marzolla, Patrick A. Knowles, and Dennis Lynch of counsel), for appellants.

Jacobowitz & Gubits, LLP, Walden, NY (Kelly A. Pressler and Kara J. Cavallo of counsel), for respondent.

In a hybrid proceeding pursuant to CPLR article 78 and action for declaratory relief, the respondents/defendants appeal from an order of the Supreme Court, Orange County (Elaine Slobod, J.), dated February 15, 2017. The order, insofar as appealed from, denied that branch of the respondents/defendants' motion which was pursuant to CPLR 3211(a) to dismiss the causes of action for a declaratory judgment.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the respondents/defendants' motion which was pursuant to CPLR 3211(a) to dismiss the causes of action for a declaratory judgment is granted.

In October 2016, BT Holdings, LLC (hereinafter BT Holdings), commenced this hybrid proceeding pursuant to CPLR article 78 and action for a judgment declaring that Local Law No. 2 of 2016 of the Village of Chester (hereinafter Local Law No. 2) is void and of no force or effect. The Village of Chester and Village of Chester Board of Trustees (hereinafter together the defendants) moved pursuant to CPLR 3211(a) to dismiss the amended petition/complaint, arguing, inter alia, that BT Holdings failed to serve a notice of claim as required under CPLR 9802. In an

June 20, 2018

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order dated February 15, 2017, the Supreme Court granted that branch of the defendants' motion which was to dismiss the causes of action asserted pursuant to CPLR article 78 and otherwise denied the motion. The defendants appeal from so much of the order as denied that branch of their motion which was to dismiss the causes of action for declaratory relief. We reverse the order insofar as appealed from.

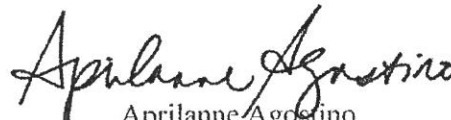
Contrary to BT Holdings' contention, the notice of claim requirements of CPLR 9802 apply to the causes of action for declaratory relief (*see Nioras v Village of Rye Brook*, 74 AD3d 1036; *Solow v Liebman*, 175 AD2d 867, 868-869).

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

Accordingly, the Supreme Court should have granted that branch of the defendants' motion which was pursuant to CPLR 3211(a) to dismiss the causes of action for a judgment declaring that Local Law No. 2 is void and of no force or effect.

SCHEINKMAN, P.J., DUFFY, CONNOLLY and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court