

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Matter of Lilly Pad, LLC v. Zoning Board of Appeals of Village of
East Hampton

Matter of Lilly Pad, LLC v. Zoning Bd. of Appeals of Vil. of E. Hampton, 120 A.D.3d 686 (2d Dep't 2014) · No. 2012-08638 · Decided August 20, 2014

SUMMARY

The New York Appellate Division, Second Department dismissed as academic an appeal from a judgment dismissing a CPLR article 78 proceeding challenging a zoning board determination approving a residential addition without certain setback variances. The court held that the challenged determination had been superseded by a subsequent determination and construction permit, so the appeal would not affect the parties' rights and no exception to the mootness doctrine applied.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Per Curiam; Mark C. Dillon, J.P.; L. Priscilla Hall, J.; Robert J. Miller, J.; Sylvia O. Hinds-Radix, J.
JURISDICTION	New York
DECIDED	August 20, 2014
DOCKET	2012-08638
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a judgment of the Supreme Court, Suffolk County, denying a CPLR article 78 petition and dismissing the proceeding; respondents cross-moved to dismiss the appeal as academic or barred by laches.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Lilly Pad, LLC v. Zoning Board of Appeals of Village of East Hampton, Sheri Kersch-Schultz, Residence Trust No. 1, Howard D. Schultz, Residence Trust No. 1

TOPICS

mootness

appellate procedure

judicial review of agency action

administrative law

zoning

PRACTICE AREAS

administrative law

municipal law

zoning

appellate procedure

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed as academic because the challenged ZBA determination was superseded by a subsequent determination and new construction permit.
2. Whether the appeal should be dismissed under the doctrine of laches.

HOLDINGS

1. The appeal was moot and had to be dismissed as academic because the challenged ZBA determination was superseded by a subsequent determination pursuant to which a new construction permit was issued, so a determination by the court would not affect the parties' rights.
2. The court denied as academic the branch of the cross motion seeking dismissal based on laches because the appeal was dismissed on mootness grounds.

KEY QUOTATIONS

“Generally, an appeal “will be considered moot unless the rights of the parties will be directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment”
([*2])

“Since the determination challenged in this proceeding was superseded by a subsequent determination by the ZBA, pursuant to which a new construction permit was issued, any determination by this Court will not affect the rights of the parties, and the matter does not otherwise warrant invoking an exception to the mootness doctrine” ([*2])

FACTUAL BACKGROUND

The Zoning Board of Appeals of the Village of East Hampton granted the Schultz respondents' application to construct an addition to their residence without requiring certain setback variances. During the appeal, the construction permit issued pursuant to that determination expired. The Schultz respondents then submitted a new application, after which the ZBA held another hearing, issued a new determination relying in part on an additional ground, and issued a new construction permit.

PROCEDURAL HISTORY

Lilly Pad, LLC commenced a CPLR article 78 proceeding challenging the Zoning Board of Appeals' determination granting the Schultz respondents permission to construct a residence addition without certain setback variances. The Supreme Court, Suffolk County, denied the petition and dismissed the proceeding. While the appeal was pending, the original construction permit expired, the Schultz respondents filed a new application, and the ZBA issued a superseding determination and new permit. The Appellate Division dismissed the appeal as academic and did not reach the merits.

DISPOSITION

dismissed

CASES CITED

- Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714
- Matter of Richmond County Dist. Attorney v. Staten Is. Univ. Hosp., 109 A.D.3d 620, 620
- Yuelys v. Grigonis, 112 A.D.2d 157

OPINION

PER CURIAM.

Matter of Lilly Pad, LLC v Zoning Bd. of Appeals of Vil. of E. Hampton (2014 NY Slip Op 05878) Matter of Matter of Lilly Pad, LLC v Zoning Bd. of Appeals of Vil. of E. Hampton 2014 NY Slip Op 05878 Decided on August 20, 2014 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on August 20, 2014 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P. L. PRISCILLA HALL ROBERT J. MILLER SYLVIA O. HINDS-RADIX, JJ. 2012-08638 (Index No. 18105/11) [*1] In the Matter of Lilly Pad, LLC, appellant, v Zoning Board of Appeals of Village of East Hampton, et al., respondents. MacLachlan & Eagan LLP, East Hampton, N.Y.

(David E. Eagan, Brian E. Matthews, and Alice Cooley of counsel), for appellant. Lamb & Barnosky, LLP, Melville, N.Y. (Joel M. Markowitz of counsel), for respondent Zoning Board of Appeals of Village of East Hampton. Ackerman, Levine, Cullen, Brickman & Limmer, LLP, Great Neck, N.Y. (John M. Brickman and Andrew J. Luskin of counsel), for respondents Sheri Kersch-Schultz, Residence Trust No. 1, and Howard D. Schultz, Residence Trust No. 1.

In a proceeding pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the Village of East Hampton dated May 2, 2011, which, after a hearing, granted the application of the respondents Sheri Kersch-Schultz, Residence Trust No. 1, and Howard D. Schultz, Residence Trust No. 1, to construct an addition to a residence on certain property, the petitioner appeals from a judgment of the Supreme Court, Suffolk County (Leis III, J.), dated May 21, 2012, which denied the petition and dismissed the proceeding.

DECISION & ORDER Cross motion by the respondents Sheri Kersch-Schultz, Residence Trust No. 1, and Howard D. Schultz, Residence Trust No. 1, to dismiss the appeal on the grounds that it has been rendered academic or that it is barred by the doctrine of laches. By decision and order on motion of this Court dated June 17, 2013, the cross motion was held in abeyance and referred to

the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the cross motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is, ORDERED that the branch of the cross motion which is to dismiss the appeal on the ground that it has been rendered academic is granted; and it is further, ORDERED that the branch of the cross motion which is to dismiss the appeal on the ground that it is barred by the doctrine of laches is denied as academic; and it is further, ORDERED that the appeal is dismissed as academic, with one bill of costs to the respondents appearing separately and filing separate briefs.

The petitioner commenced this CPLR article 78 proceeding to review a determination [*2]of the Zoning Board of Appeals of the Village of East Hampton (hereinafter the ZBA), which granted the application of Sheri Kersch-Schultz, Residence Trust No. 1, and Howard D. Schultz, Residence Trust No. 1 (hereinafter together the Schultz respondents), to construct an addition to their residence without requiring certain setback variances.

It is undisputed that during the pendency of this appeal, the construction permit issued to the Schultz respondents pursuant to the ZBA's determination expired. Subsequently, the Schultz respondents submitted a new application to the ZBA, which resulted in another hearing and a new determination, in which the ZBA again granted the Schultz respondents' application, but this time invoked an additional ground for not requiring certain setback variances.

Generally, an appeal "will be considered moot unless the rights of the parties will be directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment" (Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714; see Matter of Richmond County Dist. Attorney v Staten Is. Univ. Hosp., 109 AD3d 620, 620). Since the determination challenged in this proceeding was superseded by a subsequent determination by the ZBA, pursuant to which a new construction permit was issued, any determination by this Court will not affect the rights of the parties, and the matter does not otherwise warrant invoking an exception to the mootness doctrine (see Matter of Hearst Corp. v Clyne, 50 NY2d at 714; see also Yuelys v Grigonis, 112 AD2d 157).

Accordingly, we grant that branch of the Schultz respondents' cross motion which was to dismiss the appeal on the ground that the appeal has been rendered academic, and do not address the merits of the petitioner's claims. DILLON, J.P., HALL, MILLER and HINDS-RADIX, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court