

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

City Club of N.Y. v. Extell Dev. Co.

2019 N.Y. Slip Op. 08012 (App. Div. 2019) · No. 154205/19; M-7735; 10383A & 10383 · Decided November 7, 2019

SUMMARY

The Appellate Division, First Department dismissed as moot appeals from a judgment dismissing the complaint and an order denying preliminary injunctive relief. The court held that the plaintiffs' administrative remedies were exhausted after the Board of Standards and Appeals issued a final decision, and that no action remained pending to support review of the injunction denial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Renwick, J.; Richter, J.; Mazzairelli, J.; Oing, J.
JURISDICTION	New York
DECIDED	November 7, 2019
DOCKET	154205/19; M-7735; 10383A & 10383
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment dismissing their complaint and an order dismissing the complaint and denying preliminary injunctive relief. During the appeal, the Board of Standards and Appeals issued a final decision on plaintiffs' administrative appeal.
PRECEDENTIAL VALUE	precedential
PARTIES	The City Club of New York, et al. v. Extell Development Company, et al.

TOPICS

mootness appellate procedure exhaustion of remedies injunctions administrative law

PRACTICE AREAS

appellate procedure administrative law municipal law zoning and land use construction law

QUESTIONS PRESENTED

1. Whether the appeal from dismissal of the complaint became moot after the Board of Standards and Appeals issued a final decision and plaintiffs' administrative remedies were exhausted.
2. Whether the appeal from denial of preliminary injunctive relief remained justiciable after no action was pending.

HOLDINGS

1. The appeal from dismissal of the complaint was moot because the Board of Standards and Appeals had issued a final decision, thereby exhausting the administrative remedies.
2. The appeal from the order denying preliminary injunctive relief was moot because no action was presently pending.

KEY QUOTATIONS

“Because the administrative remedies have now been exhausted, the appeal from the dismissal of the complaint is moot”

“Since no action is presently pending, the appeal from the order denying the injunction is moot”

FACTUAL BACKGROUND

Plaintiffs alleged that defendants' construction of a high-rise building in Manhattan violated zoning regulations. After an unsuccessful challenge to a permit issued by the New York City Department of Buildings, plaintiffs pursued an administrative appeal before the Board of Standards and Appeals while also litigating this action. The Board issued a final decision denying the administrative appeal while the appellate proceedings were pending.

PROCEDURAL HISTORY

Plaintiffs challenged defendants' construction of a Manhattan high-rise as violating zoning regulations and sought a preliminary injunction halting construction. Supreme Court, New York County, granted defendants' cross-motion to dismiss for failure to exhaust administrative remedies, denied preliminary injunctive relief as academic, and entered judgment dismissing the complaint. While the appeal was pending, the Board of Standards and Appeals denied plaintiffs' administrative appeal, exhausting the administrative remedies; the Appellate Division dismissed both appeals as moot.

DISPOSITION

dismissed

CASES CITED

- 985 Fifth Ave, LLC v. Reiss, 8 A.D.3d 11, 12 (1st Dep't 2004)
- Hakim v. James, 169 A.D.3d 450, 452 (1st Dep't 2019)

OPINION

City Club of N.Y. v. Extell Dev. Co. 2019 NY Slip Op 8012

PER CURIAM.

City Club of N.Y. v Extell Dev. Co. (2019 NY Slip Op 08012) City Club of N.Y. v Extell Dev. Co. 2019 NY Slip Op 08012 Decided on November 7, 2019 Appellate Division, First 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 November 7, 2019 Friedman, J.P., Renwick, Richter, Mazzairelli, Oing, JJ. 154205/19 -7735 10383A & 10383 [*1] The City Club of New York, et al., Plaintiffs-Appellants, vExtell Development Company, et al., Defendants-Respondents. John R. Low-Beer, Brooklyn, for appellants. Boies Schiller Flexner LLP, Armonk (Jason Cyrulnik of counsel), for respondents. Appeals from judgment, Supreme Court, New York County (Barbara Jaffe, J.), entered June 14, 2019, dismissing the complaint, and order, same court and Justice, entered June 11, 2019, dismissing the complaint and denying preliminary injunctive relief, unanimously dismissed, without costs, as moot. In this action, plaintiffs allege that defendants' construction of a high-rise building in Manhattan violates various zoning regulations. Plaintiffs brought this litigation after an unsuccessful challenge to a permit issued by the NYC Department of Buildings (DOB). Plaintiffs moved for a preliminary injunction halting further construction, and defendants cross-moved to dismiss the complaint. While this action was pending, plaintiffs also pursued an administrative appeal of DOB's decision to issue the permit before the Board of Standards and Appeals (BSA). The motion court granted defendants' cross motion based on plaintiffs' failure to have exhausted their administrative remedies, and denied the preliminary injunction as academic. A judgment dismissing the complaint was subsequently entered. After this appeal was perfected, the parties informed this Court that BSA issued a final decision denying plaintiffs' administrative appeal. Because the administrative remedies have now been exhausted, the appeal from the dismissal of the complaint is moot (see 985 Fifth Ave, LLC v Reiss, 8 AD3d 11, 12 [1st Dept 2004]). We find no merit to plaintiffs' argument that the appeal from the denial of the preliminary injunction is still properly before us. Since no action is presently pending, the appeal from the order denying the injunction is moot (see Hakim v James, 169 AD3d 450, 452 [1st Dept 2019]). M-7735 - The City Club of New York v Extell Development Company Motion to dismiss appeal denied as academic.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 7, 2019

CLERK