

**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

OPINION

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

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-of-the-state-of-new-york-appellate-division-first-department/2019/city-club-of-n-y-v-extell-dev-co-cwcai0>