

SUPREME COURT OF VERMONT

In re Dunkin Donuts S.P. Approval (Montpelier), 2008 VT 139

969 A.2d 683 (Vt. 2008) · No. No. 07-468 · Decided December 23, 2008

SUMMARY

The Vermont Supreme Court held that an applicant seeking to amend a zoning site plan was not required to obtain relief under Vermont Rule of Civil Procedure 60(b) before filing a successive application. The court explained that Vermont's successive-application doctrine, rather than strict claim preclusion, governs renewed zoning applications and requires the applicant to address the concerns that prevented approval of the prior application. The court reversed and remanded, while a partial dissent argued that the applicant should be bound by the stipulated judgment's express prohibition on a drive-through window.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	December 23, 2008
DOCKET	No. 07-468
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Quadros appealed the Environmental Court's grant of summary judgment to Cumberland Farms in a zoning and site-plan dispute.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the trial court: whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. The Environmental Court's legal conclusion regarding the need for Rule 60(b) relief was reviewed de novo.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Damartin Quadros v. Cumberland Farms, Inc.

TOPICS

- zoning
- res judicata
- summary judgment
- appellate procedure
- administrative law

PRACTICE AREAS

Land use and zoning

Administrative law

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether Quadros was required to obtain relief under Vermont Rule of Civil Procedure 60(b) before submitting a successive site-plan application seeking approval for a drive-through window.
2. Whether the successive-application doctrine, rather than the traditional Rule 60(b) procedure, governs a renewed zoning application after a prior final or consent judgment.
3. Whether the 2003 stipulated Environmental Court judgment had the preclusive effect of a final judgment on the merits.

HOLDINGS

1. A zoning applicant need not file a Rule 60(b) motion before submitting a successive site-plan application. The successive-application doctrine is the specifically tailored preclusion rule governing renewed zoning applications.
2. An Environmental Court consent judgment incorporating a stipulated agreement has the same preclusive effect as a final judgment on the merits; nevertheless, relief from a final zoning decision is properly sought through the successive-application doctrine.
3. Although Quadros could file the successive application without first seeking Rule 60(b) relief, approval would require a showing that the new application addresses all concerns that prevented approval of the prior drive-through proposal.

KEY QUOTATIONS

“a “zoning board or planning commission may not entertain a second application concerning the same property after a previous application has been denied, unless a substantial change of conditions ha[s] occurred or other considerations materially affecting the merits of the request have intervened between the first and second applications.”” (2008 VT 139, ¶ 8)

“Quadros was free to file a successive application with the Review Board without first seeking Rule 60(b) relief. However, proper approval would require that Quadros show that the successive application “addresses all concerns that prevented approval” of the drive-through in his prior applications.” (2008 VT 139, ¶ 13)

FACTUAL BACKGROUND

In 2001, Damartin Quadros sought approval to construct a Dunkin Donuts restaurant and retail store with a drive-through window in Montpelier, but the Planning Commission denied the proposal because of traffic and vehicle-queue concerns. Quadros submitted a revised plan without a drive-through, which was approved after Cumberland Farms appealed and then entered into a stipulation with Quadros. The stipulation was incorporated into a 2003 Environmental Court order requiring that the restaurant not include drive-through service. In 2006, Quadros sought and obtained approval for an amended site plan adding a drive-through window.

PROCEDURAL HISTORY

Quadros's 2001 application for a Dunkin Donuts restaurant with a drive-through window was denied because of traffic-related concerns. He later obtained approval for a revised plan without a drive-through, and that approval was incorporated into a 2003 stipulated Environmental Court order requiring that the project not include drive-through service. In 2006, the Development Review Board approved an amended plan adding a drive-through window; after Cumberland Farms appealed, the Environmental Court granted summary judgment and held that Quadros first had to obtain relief under Vermont Rule of Civil Procedure 60(b). The Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for proceedings under the successive-application doctrine, including determination whether Quadros's successive application addresses all concerns that prevented approval of the prior drive-through applications.

CASES CITED

- In re Jolley Assocs., 2006 VT 132, ¶ 7, 181 Vt. 190, 915 A.2d 282
- In re Armitage, 2006 VT 113, ¶¶ 3-4, 181 Vt. 241, 917 A.2d 437
- Johnston v. Wilkins, 2003 VT 56, ¶ 8, 175 Vt. 567, 830 A.2d 695 (mem.)
- In re Carrier, 155 Vt. 152, 157-58, 582 A.2d 110, 113 (1990)
- In re Crescent Beach Ass'n, 126 Vt. 140, 141, 224 A.2d 915, 916 (1966)
- Russell v. Atkins, 165 Vt. 176, 179, 679 A.2d 333, 335 (1996)
- Faulkner v. Caledonia County Fair Ass'n, 2004 VT 123, ¶ 10, 178 Vt. 51, 869 A.2d 103
- Schubach v. Silver, 461 Pa. 366, 336 A.2d 328, 333 (1975)
- Marks v. Zoning Bd. of Review of Providence, 98 R.I. 405, 203 A.2d 761, 763 (1964)
- Pouech v. Pouech, 2006 VT 40, ¶ 20, 180 Vt. 1, 904 A.2d 70
- In re Estate of Cartmell, 120 Vt. 234, 240, 138 A.2d 592, 595 (1958)
- In re Nehemiah Assocs., 168 Vt. 288, 294, 719 A.2d 34, 37-38 (1998)
- In re Stowe Club Highlands, 166 Vt. 33, 37-38, 687 A.2d 102, 105 (1996)
- Goshy v. Morey, 149 Vt. 93, 97, 539 A.2d 543, 546 (1987)