

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Matter of Pharaohs GC, Inc. v. New York State Liquor Authority

Matter of Pharaohs GC, Inc. v. New York State Liq. Auth., 2021 NY Slip Op 04881 (App. Div. 2021) · No. CA 21-00292 · Decided August 26, 2021

SUMMARY

The New York Appellate Division, Fourth Department dismissed as moot an appeal concerning COVID-19 pandemic-related guidance issued by the New York State Liquor Authority, including a prohibition on exotic dancing at licensed bars and restaurants. Because the guidance was no longer in effect and the issue was not likely to recur or evade review, the court vacated the lower court's judgment to prevent it from having legal or precedential consequences.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Smith, J.P.; Carni, J.; Nemoyer, J.; Troutman, J.; Winslow, J.
JURISDICTION	New York
DECIDED	August 26, 2021
DOCKET	CA 21-00292
DISPOSITION	dismissed
PROCEDURAL POSTURE	The New York State Liquor Authority appealed from a Supreme Court judgment, denominated an order, that permanently enjoined enforcement of COVID-19 pandemic-related guidance. The Appellate Division dismissed the appeal as moot and vacated the judgment.
STANDARD OF REVIEW	The appellate court reviewed whether the appeal remained justiciable under the mootness doctrine and whether an exception to that doctrine applied.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential as to the mootness and vacatur principles stated, although the appeal itself was dismissed without a merits determination.
PARTIES	New York State Liquor Authority v. Pharaohs GC, Inc.

TOPICS

mootness

appellate procedure

judicial review of agency action

administrative law

declaratory judgment

PRACTICE AREAS

administrative law

civil procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the appeal was moot because the challenged COVID-19 pandemic-related guidance was no longer in effect.
2. Whether the exception to the mootness doctrine applied because the issue was likely to recur or typically evaded review.
3. Whether the judgment should be vacated to prevent an unreviewable judgment from creating legal consequences or precedent.

HOLDINGS

1. The appeal was moot because the challenged guidance was no longer in effect and the parties correctly conceded mootness.
2. The exception to the mootness doctrine did not apply because the issue was not likely to recur and was not of a type that typically evades review.
3. The judgment was vacated so that an unreviewable judgment would not create legal consequences or precedent.

KEY QUOTATIONS

*"As a final matter, " 'in order to prevent [the] judgment which is unreviewable for mootness from spawning any legal consequences or precedent,' " we vacate the judgment" ([*1])*

FACTUAL BACKGROUND

The New York State Liquor Authority issued COVID-19 pandemic-related guidance governing licensed bars and restaurants, including a prohibition on exotic dancing. Pharaohs GC, Inc. challenged the guidance in a hybrid CPLR article 78 proceeding and declaratory judgment action, and Supreme Court permanently enjoined its enforcement. By the time of the appeal, the guidance was no longer in effect.

PROCEDURAL HISTORY

Pharaohs GC, Inc. commenced a hybrid CPLR article 78 proceeding and declaratory judgment action in Supreme Court, Erie County, challenging Liquor Authority guidance that prohibited exotic dancing at licensed bars and restaurants during the COVID-19 pandemic. Supreme Court entered a judgment permanently enjoining enforcement of the guidance. The Liquor Authority appealed, but the guidance had ceased to be in effect while the appeal was pending.

DISPOSITION

dismissed

CASES CITED

- Saratoga County Chamber of Commerce, Inc. v. Pataki, 100 N.Y.2d 801, 810-812 (2003), cert. denied, 540 U.S. 1017 (2003)
- People v. Rikers Is. Corr. Facility Warden, 112 A.D.3d 1350, 1351 (4th Dep't 2013), lv. denied, 22 N.Y.3d 864 (2014)
- Wisholek v. Douglas, 97 N.Y.2d 740, 742 (2002)
- Coleman v. Daines, 19 N.Y.3d 1087, 1090 (2012)
- Matter of Thrall v. CNY Centro, Inc., 89 A.D.3d 1449, 1451 (4th Dep't 2011), lv. dismissed, 19 N.Y.3d 898 (2012)
- Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707, 718 (1980)
- Matter of Sportsmen's Tavern LLC v. New York State Liq. Auth., 195 A.D.3d 1557, 1559 (4th Dep't 2021)

OPINION

PER CURIAM.

Matter of Pharaohs GC, Inc. v New York State Liq. Auth. (2021 NY Slip Op 04881) Matter of Pharaohs GC, Inc. v New York State Liq. Auth. 2021 NY Slip Op 04881 Decided on August 26, 2021 Appellate Division, Fourth 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 26, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: SMITH, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ. 639.1 CA 21-00292 [*1]IN THE MATTER OF PHARAOHS GC, INC., PETITIONER-PLAINTIFF-RESPONDENT, vNEW YORK STATE LIQUOR AUTHORITY, RESPONDENT-DEFENDANT-APPELLANT. LETITIA JAMES, ATTORNEY GENERAL, ALBANY (SARAH L. ROSENBLUTH OF COUNSEL), FOR RESPONDENT-DEFENDANT-APPELLANT.

HOGAN WILLIG, PLLC, AMHERST (BRETT D. TOKARCZYK OF COUNSEL), FOR PETITIONER-PLAINTIFF-RESPONDENT. Appeal from a judgment (denominated order) of the Supreme Court, Erie County (Paul Wojtaszek, J.), entered January 28, 2021 in a CPLR article 78 proceeding and declaratory judgment action.

The judgment, inter alia, permanently enjoined respondent-defendant from enforcing certain COVID-19 pandemic-related guidance. It is hereby ORDERED that said appeal is unanimously dismissed without costs and the judgment is vacated. Memorandum: Petitioner-plaintiff commenced this hybrid CPLR article 78 proceeding and declaratory judgment action challenging

COVID-19 pandemic-related guidance issued by respondent-defendant New York State Liquor Authority (SLA) that, among other things, prohibited exotic dancing during the pandemic at licensed bars and restaurants.

SLA appeals from a judgment that, *inter alia*, permanently enjoined SLA from enforcing the guidance. We dismiss the appeal as moot. The guidance at issue is no longer in effect, and the parties correctly concede that this appeal is moot (see *Saratoga County Chamber of Commerce, Inc. v Pataki*, 100 NY2d 801, 810-811 [2003], cert denied 540 US 1017 [2003]). Contrary to SLA's contention, the issue here is not likely to recur (see generally *id.* at 811-812; *People v Rikers Is.*

Corr. Facility Warden, 112 AD3d 1350, 1351 [4th Dept 2013], lv denied 22 NY3d 864 [2014]), and it "is not of the type that typically evades review" (*Wisholek v Douglas*, 97 NY2d 740, 742 [2002]). Therefore, the exception to the mootness doctrine does not apply (cf. generally *Coleman v Daines*, 19 NY3d 1087, 1090 [2012]).

As a final matter, " 'in order to prevent [the] judgment which is unreviewable for mootness from spawning any legal consequences or precedent,' " we vacate the judgment (*Matter of Thrall v CNY Centro, Inc.*, 89 AD3d 1449, 1451 [4th Dept 2011], lv dismissed 19 NY3d 898 [2012], quoting *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 718 [1980]; see *Matter of Sportsmen's Tavern LLC v New York State Liq.*

Auth., 195 AD3d 1557, 1559 [4th Dept 2021]). Entered: August 26, 2021 Mark W. Bennett Clerk of the Court