STATE OF NEW YORK
SUPREME COURT SENECA COUNTY

In the Matter of the Application of

SENECA MEADOWS, INC.,

Petitioner-Plaintiff

Decision, Order, and Judgment

-vs-

TOWN OF SENECA FALLS, and
TOWN OF SENECA FALLS TOWN BOARD,

Index No.: 51652

Respondents-Defendants,

CONCERNED CITIZENS OF SENECA COUNTY, INC., and DIXIE D. LEMMON,

Intervenors-Respondents-Defendants.

Appearances:

Scott Turner, Esq., for the Petitioner-Plaintiff
David Hou, Esq., for Respondents-Defendants
Douglas Zamelis, Esq., for Intervenors-Respondents-Defendants

Daniel J. Doyle, J.

Petitioner-Plaintiff ("Petitioner") operates a waste disposal facility in Seneca County and has commenced this combined Article 78 and plenary action seeking to challenge Seneca Falls Local Law #3 of 2016 ("Local Law #3"), which, among other things, prohibits waste disposal facilities in the Town of Seneca Falls

and permits existing waste disposal facilities in the Town of Seneca Falls to continue to operate until December 31, 2025. The Town of Seneca Falls enacted Local Law #3 in December 2016, and it was filed with the Department of State on December 30, 2016.

In February 2017, Petitioner timely commenced an action challenging enactment of Local Law #3 on procedural grounds (hereinafter, the "First Action"). During the pendency of the First Action, but after the 4-month statute of limitations expired, the Town of Seneca Falls Passed Local Law #2 in May 2017, which repealed Local Law #3*s ban on Solid Waste Disposal Facilities. Petitioner states that as a result, it felt that its action challenging Local Law #3 was moot and voluntarily discontinued the First Action on June 14, 2017. Prior to the Petitioner discontinuing the First Action, an action challenging Local Law #2 was challenged in an Article 78 proceeding filed June 7, 2017 and Judge Kocher held in a decision dated September 13, 2017, and Order dated October 16, 2016, that Local Law #2 was improperly enacted and annulled Local Law #2 (*Waterloo Contractors, Inc. v Town of Seneca Falls Town Board, et al* [Seneca County Index No.:

31182] [Kocher, J.]).[1]

Petitioner thereafter commenced this action by filing on November 15, 2017. The parties requested several adjournments while exploring potential resolutions. During that time, Concerned Citizens of Seneca County and Dixie D. Lemmon sought permission to intervene in this action and intervention was granted.

The Respondents have each moved to dismiss the Petition/Complaint pursuant to CPLR 3211[a][1] (defense founded upon documentary evidence), CPLR 3211[a][5] (statute of limitations) and CPLR 3211[a][7] (failure to state a cause of action).

A. The standard of review

1. A defense founded upon documentary evidence under CPLR 3211[a][1]

CPLR 3211[a][1] allows a motion to dismiss a cause of action on the basis that a defense is founded on documentary evidence. In order to succeed on a motion to dismiss pursuant to CPLR 3211[a][1], the documentary evidence that

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[1]Petitioner attached both the Decision and Order to its Petition/Complaint as exhibits.

forms the basis of the defense must resolve all factual issues as a matter of law and conclusively dispose of the Plaintiffs claim (*Wells Fargo Bank, N .A. v Zahran,* 100 AD3d 1549, 1550 [4th Dept 2012]).

2. *Statute of limitations defense under CPLR 3211[a][5]*

On a motion to dismiss a cause of action pursuant to CPLR 3211[a][5] on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired (*Collins v Davirro,* 160 AD3d 1343.1343*44 [4th Dept 2018]). Once a defendant establishes prima facie that the limitations period has expired, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or is otherwise inapplicable, and if applicable, whether the plaintiff actually commenced the action within the applicable limitations period (*U.S. Bank N.A. v Gordon,* 176 AD3d 1006, 1007-1008 [2d Dept 2019]).

3. *Failure to state a cause of action under CPLR 3211[a][7]*

CPLR 3211[a][7] authorizes the summary dismissal of a complaint for failure o state a cause of action. The Court of Appeals has held that "the criterion

is whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one" (*Guggenheimer v Ginzburg* , 43 NY2d 268, 275 [1977]). On a motion made pursuant to CPLR 3211[a][7], the Court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). In determining a motion to dismiss under CPLR 3211[a][7], The Fourth Department has held that the Court may consider under CPLR 3211[c] evidentiary material submitted on a motion to dismiss for the limited purpose of assessing the facial sufficiency of a complaint, but may only grant dismissal if the evidentiary material establishes "conclusively that plaintiff has no cause of action" (*Liberty Affordable Hous., Inc. v Maple Ct. Apartments*, 125 AD3d 85, 89 [4th Dept 2015] (emphasis in the original)).

B. The procedural challenges to Local Law #3 (First, Third and Fourth Causes of Action)

As the Petition/Complaint challenges the procedural aspects of the enactment of Local Law #3, the parties agree that the limitations period is four

months (CPLR 217(1]), as the challenge "is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an article 78 proceeding" (*Schiener v Town of Sardinia*, 48 AD3d 1253, 1254 [4th Dept 2008] quoting *Matter of Save the Pine Bush v City of Albany*, 70 NY2d 193, 202 [1987]). The parties disagree as to when the limitations period began.

The Respondents contend that the limitations period began when Local Law #3 became effective upon its filing with the Department of State on December 30, 2016 and expired four months thereafter on April 30, 2017. The Petitioner in response argues that Action challenging Local Law #3 and the subsequent intervention of Local Law #2 repealing Local Law #3 rendered the challenge in the First Action as moot, compelling the Petitioner to discontinue. Once that occurred, Local Law #3 was no longer "final and binding" and, thus, the limitations would not begin to run anew until Local Law #2 was annulled.

The Respondents have demonstrated that the four month statute of limitations period began on December 30, 2016 and expired on April 30, 2017. During that period, Local Law #3 was final and binding. Local Law #2 did not annul Local Law #3 until after the limitations period ran, and, thus, could not serve to toll the statute of limitations.

While the Petitioner claims it was left with a Hobson's choice of discontinuing the First Action upon the annulment of Local Law #3, the Respondents correctly point out that the Petitioner had more than one option: it could have sought a stay in the First Action, it could have moved to join the First Action with *Waterloo Contractors, Inc,* the action that challenged Local Law #2, it could have sought to make an agreement to waive the statute of limitations period, or it could have sought court intervention and moved to discontinue the First Action upon condition (CPLR 3217[b]). Respondents also correctly point out that Petitioner's argument is incompatible with CPLR 205[a].

As the Respondents have established that the statute of limitations bars the procedural challenges to Local Law #3 and the Petitioner has failed to raise a question of fact, the Respondents are entitled to dismissal of the First, Second and Fourth Causes of Action pursuant to CPLR 3211[a][5].

C. The substantive due process challenge to Local Law #3

In order to establish a substantive due process violation in the land-use party must establish both a "deprivation of a vested property interest' and that the challenged governmental action was "wholly without legal justification"

(*Glacial Aggregates LLC v Town of Yorkshire*, 14 NY3d 127, 136 [2010]). The Respondents argue that the Petitioner has failed to establish either prong.

In determining whether a deprivation of a vested property interest occurred, there must be "more than a mere expectation or hope to retain the permit and continue their improvements; they must show that pursuant to State or local law, they had a legitimate claim of entitlement to continue construction" (*Bower Assoc, v Town of Pleasant Val* , 2 NY3d 617, 627 [2004]). And in determining a "legitimate claim or entitlement to a permit," it has been held that it "can exist only where there is either a certainty or a very strong likelihood that an application for approval would have been granted" (*Acquest Wehrle, LLC v Town of Amherst*, 129 AD3d 1644, 1647 [4th Dept 2013]).

Here, Local Law #3 did not result in the revocation of any permit issued to the Petitioner and specifically allowed any existing facility to continue operation under a permit to December 31, 2025. The Petitioner currently has a permit issued by the New York State Department of Environmental Conservation issued pursuant to Part 360 (6 NYCRR §360-i.8[f]) that expires on December 31, 2025. The Petitioner and the Town of Seneca Falls also entered into a Host Agreement that permits the Petitioner to operate until December 31, 2025. Finally, in

submitting its Part 360 permit renewal application, the Petitioner stated that "the current minimum site life is projected until 2024." Thus, it cannot be said that the "legitimate claim of entitlement" rising to the level of "certainty or a very strong likelihood" that it would be operating the Seneca Meadows facility past December 31, 2025 and Local Law #3 explicitly allows the Petitioner to continue to do so until December 31, 2025.

In determining whether the challenged governmental action was wholly without legal justification "only the most egregious official conduct can be said to be arbitrary in the constitutional sense" (*St. Joseph Hosp. of Cheektowaga v Novello*, 43 AD3d 139, 144 [4th Dept 2007]), which requires that the action be so outrageously arbitrary as to constitute a gross abuse of governmental authority" (*Town of Tupper Lake v Sootbusters, LLC*, 147 AD3d 1268, 1271 [3d Dept 2017]). Here, Local Law #3 was not enacted pursuant to the Town's zoning authority conferred under Town Law Article 16, but rather, under its police powers found under Town Law Article 9 (see *Town of Islip v Zalak*,165 AD2d 83, 88 [2d Dept 1991]). Local Law #3 does not target a particular property or zoning district, but is applicable town-wide. As the Fourth Department has held, it is permissible for a town to do so:

> It is well established that a municipality has the authority, pursuant to its police powers, to impose conditions of operation ... upon preexisting nonconforming uses to protect public safety and welfare and may even eliminate a nonconforming use provided that termination is accomplished in a reasonable fashion (*Jones v Town of Carroll*, 122 AD3d 1234, 1238 [4th Dept 2014]).

The Respondents have established that the Petitioner has failed to state a cause of action for a substantive due process violation and, if, in the alternative, that the Petitioner did state a cause of action, documentary evidence conclusively disposes of the claim. As the Petitioner sought a declaration pursuant to CPLR 3001 that Local Law #3 was unconstitutional, the Respondents are entitled to a declaration in their favor see (*Rowe v Town of Chautauqua*, 84 AD3d 1728, 1729 [4th Dept 2011]).

D. Conclusion

Based upon the foregoing it is hereby

ORDERED that the Respondents' motions to dismiss is hereby GRANTED; and it is further

ORDERED that the First, Second, and Fourth Causes of Action are dismissed pursuant to CPLR 3211[a][5]; and it is further

ORDERED that on the Third Causes of Action, the moving parties are entitled to a declaratory judgment in their favor; and it is further

ORDERED, ADJUDGED, AND DECREED that Local Law #3 of the Year 2016 does not deprive the Petitioner of substantive due process rights in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

Dated: April 28, 2020

The Honorable Daniel J. Doyle
Supreme Court Justice