Aug 2022 | Articles Blog: The Westchester Litigator

A Tale of Two Standards: Second Department Highlights Distinct Standing Requirements in Hybrid Article 78 Proceedings

Article 78 of the New York Civil Practice Law and Rules provides the framework for judicial challenges to decisions made by public officials and bodies. When these bodies act as both decisionmaker and contractual counterparty, a harmed individual may bring a hybrid proceeding that asserts claims both under Article 78 and for breach of contract. A recent decision by the Appellate Division, Second Department examined such a case in the standing context and held that hybrid cases do not mean hybrid standards. Rather, different standing requirements apply to different claims, and the applicable standard must be satisfied for a claim to proceed on its merits.

The Case: In the Matter of *Crown Castle NC East, LLC v. City of Rye, et al.*

Crown Castle v. Rye, 2022 NY Slip Op 04626, arose out of a dispute over the petitioner/plaintiff Crown's proposal to upgrade its wireless telecommunications equipment in the city of Rye. In 2011, Rye and Crown's alleged predecessor in interest entered into a Right of Way Use Agreement (RUA) for Crown to install its equipment on pre-existing utility poles. The RUA provided that no permits or environmental review would be required for that installation. Beginning in 2015, Crown repeatedly sought to expand its Rye facilities. In response to Crown's proposals, the City Council passed resolutions stating that the new equipment fell outside the scope of the RUA, so permits and environmental review were required. Crown then brought a hybrid proceeding against the city of Rye asserting 1) a claim under Article 78 to annul the City Council's resolutions and 2) claims for damages and declaratory relief for the City's alleged breach of the RUA. The city moved to dismiss the action for lack of standing under CPLR 7804(f) and 3211(a). In granting the motion, the trial court dismissed all claims based solely on the standard for standing on a damages claim. On appeal, the Second Department reversed the decision, providing a useful clarification of the differing standing requirements between Article 78 and other claims.

The Appellate Division began its analysis by noting, "'In a hybrid proceeding and action, separate procedural rules apply to those causes of action which are asserted pursuant to CPLR article 78, on the one hand, and those to recover damages and for declaratory relief, on the other hand'" (Matter of *Muller v Zoning Bd. of Appeals Town of Lewisboro*, 192 AD3d 805, 808, quoting Matter of *Bonacker Prop., LLC v Village of E. Hampton Bd. of Trustees*, 168 AD3d 928, 932):

- Under Article 78, the petitioner (Crown) bears the burden of "establishing both an injury-in-fact and that the asserted injury is within the zone of interests sought to be protected by the statute alleged to have been violated."

- Under CPLR 3211(a) the defendant (city of Rye) bears the prima facie burden of establishing the plaintiff's lack of standing. The plaintiff can then defeat the motion by raising a question of fact as to its standing.

Applying those two standards, the Second Department concluded that Crown 1) sufficiently alleged an injury in fact within the zone of interest and so had standing under Article 78 and 2) raised a question of fact as to standing sufficient to rebut the city's motion to dismiss under 3211(a). Accordingly, the Appellate Division reinstated Crown's complaint and remanded the case to the trial court.

Takeaway

Hybrid Article 78 proceedings enable a litigant to assert multiple types of claims in one proceeding, but a consolidated action does not mean a consolidated law of standing. Separate standards apply to claims under Article 78 and for damages and parties should ensure each set of standards is satisfied when considering (or opposing) a motion to dismiss.