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Matter of MMSI Props. LLC v Warren-Washington Assn. for Mental Health Inc.
2020 NY Slip Op 50677(U) [67 Misc 3d 1230(A)]
Decided on June 8, 2020
Supreme Court, Warren County
Muller, J.
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This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 8, 2020

Supreme Court, Warren County

**In the Matter of the Application of MMSI Properties, LLC,
Petitioner, for Judgment Pursuant to Article 78 of the New York
Civil Practice Law and Rules and Injunctive Relief,**

against

**Warren-Washington Association for Mental Health, Inc., the City of
Glens Falls and the City of Glens Falls Planning Board,
Respondents.**

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Stafford, Carr & McNally, P.C., Lake George (Nathan Hall of counsel), for petitioner.

Bartlett, Pontiff, Stewart & Rhodes, P.C., Glens Falls (Karla Williams Buettner of counsel), for respondent Warren-Washington Association for Mental Health, Inc.

McPhillips Fitzgerald & Cullum, LLP, Glens Falls (Edward P. Fitzgerald of counsel), for respondents City of Glens Falls and City of Glens Falls Planning Board.

Robert J. Muller, J.

Respondent Warren-Washington Association for Mental Health, Inc. (hereinafter WWAMH) is a not-for-profit corporation formed to improve the quality of life for those affected by mental illness and to promote the awareness and importance of mental health in the community. AMH Resources Corp. (hereinafter AMH Resources) is a related not-for-profit corporation which maintains the real property and equipment used in WWAMH's operations. In October 2018, WWAMH and AMH Resources received a grant from the New York State Homeless Housing Assistance Program in the amount of \$5.8 million dollars for the construction of a supportive housing project. In December 2018, AMH Resources purchased certain property located at 47-50 Cooper Street in respondent City of Glens Falls (hereinafter the City) for use in connection with the project. Petitioner owns neighboring property located at 51-57 Walnut Street. Both properties are located within the City's light industrial district.

On April 2, 2019, WWAMH did a "Sketch Plan Review/Preliminary Presentation" for respondent City of Glens Falls Planning Board (hereinafter the Planning Board) relative to its plan for 47-50 Cooper Street. Specifically, WWAMH advised of its intention to build a 29-unit apartment complex on the property for chronically homeless individuals and families, as well as [*2] individuals suffering from mental illness and victims of domestic violence. The Planning Board discussed the project briefly following the presentation—which was done for informational purposes only—and WWAMH then submitted its application for site plan approval on May 15, 2019. Public hearings were held relative to the application on June 4, July 2, and August 6, 2019, with comments heard from many individuals and business owners—including Elizabeth Miller, petitioner's principal member. The Planning Board then passed a resolution approving the site plan on September 3, 2019.

On October 2, 2019, petitioner commenced this CPLR article 78 proceeding seeking to vacate the site plan approval as arbitrary and capricious. Petitioner contends, *inter alia*, that the Planning Board failed to adhere to § 202.20 (A) (4) of the City's Zoning Code, which provides that "[w]hile there are some residential uses in the [light industrial] district, further expansion of those uses through construction of new residential structures should be discouraged in order to provide space for the commercial/industrial uses and to avoid

conflicts in land use." Respondents have now answered, asserting several objections in point of law, including that the proceeding must be dismissed based upon petitioner's failure to name a necessary party—namely AMH Resources. Presently before the Court is petitioner's motion to amend the petition to add AMH Resources as a respondent.

At the outset, it is undisputed that AMH Resources — as owner of the subject premises —is a necessary party (*see* CPLR 1001 [a]; [Matter of Gleason v Town of Clifton Park Planning Bd.](#), 90 AD3d 1205, 1206 [2011]). That being said, respondents contend that the motion must be denied because the statute of limitations expired on January 3, 2020. The Court, however, finds this contention to be without merit.

CPLR 1001 (b) provides that "[w]hen a [necessary party] is subject to the jurisdiction of the court, the court shall order him summoned." In [Windy Ridge Farm v Assessor of Town of Shandaken](#) (11 NY3d 725 [2008]), the Court of Appeals expressly found that expiration of the statute of limitations does not deprive the Court of jurisdiction over a necessary party (*see id.* at 795). Rather, it constitutes "a defense which may, if properly asserted, deprive a plaintiff of any remedy from a defendant" (*id.* at 727, quoting *Matter of Romeo v New York State Dept. of Educ.*, 41 AD3d 1102, 1104 [2007]). To that end, the Court must "order [AMH Resources] summoned," notwithstanding that the statute of limitations has expired (CPLR 1001 [b]; *see Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d at 727). Once summoned, AMH Resources is of course free to assert a statute of limitations defense in its answer.

Based upon the foregoing, petitioner's motion to amend the petition is granted. Petitioner shall file and serve its amended petition on or before June 22, 2020. [\[EN1\]](#) The return date of the proceeding is hereby adjourned to July 17, 2020 at 9:30 A.M. at the Warren County Courthouse, with answering papers due on or before July 16, 2020 and reply papers, if any, due on or before July 23, 2020. Oral argument will be scheduled at the discretion of the Court following the return date.

Therefore, having considered the Affirmation of Nathan Hall, Esq. with exhibits attached thereto, dated February 10, 2020, submitted in support of the motion; Memorandum of Law of [\[*3\]](#)Nathan Hall, Esq., dated February 10, 2020, submitted in support of the motion; Affidavit of Eric Schwenker, Esq., sworn to February 21, 2020, submitted in opposition to the motion; and Affidavit of Karla Williams Buettner, Esq., sworn to February 21, 2020, submitted in opposition to the motion, it is hereby

ORDERED that petitioner's motion to amend the petition is granted; and it is further

ORDERED that petitioner shall file and serve its amended petition on or before June 22, 2020; and it is further

ORDERED that the return date of the proceeding is adjourned to July 17, 2020 at 9:30 A.M., with answering papers due on or before July 16, 2020 and reply papers, if any, due on or before July 23, 2020; and it is further

ORDERED oral argument will be scheduled at the discretion of the Court following the return date.

The original of this Decision and Order has been filed by the Court together with the undated Notice of Motion and the submissions enumerated above. Counsel for petitioner is hereby directed to obtain a filed copy of the Decision and Order for service with notice of entry in accordance with CPLR 5513.

Dated: June 8, 2020

Lake George, New York

ROBERT J. MULLER, J.S.C.

Footnotes

Footnote 1: While petitioner has labeled its amended petition a "second amended verified petition," it does not appear that the petition was previously amended. Rather, an amended notice of petition was filed on October 7, 2019.

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