

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
In the Matter of

LENA BODIN, LYNDA GELLIS, LAURIE GESSNER,
JOHN PORTA, CHONOCHE LUDMIR, CHEDVA
LUDMIR, SANDRA SOLOMON, WILLIAM
ABRAMSKY, BARBARA ABRAMSKY,
MINERVA RIBULLA, JOSEPH RIBULLA, ELF
LAWRENCE AHEARN, HILLCREST FIRE
COMPANY No. 1, BARRON WALL, SUSAN
HITO SHAPIRO, as Executor for the Estate of
SONYA SHAPIRO, and SUSAN HITO SHAPIRO,
as Executor for the Estate of MILTON B. SHAPIRO,

Petitioner - Plaintiff(s),

For a Judgment pursuant to Article 78 of the CPLR

-against-

DECISION & ORDER
Index No. 322/2016

Motion # 2- MG

THE PLANNING BOARD OF THE TOWN OF
RAMAPO, THE TOWN BOARD OF THE TOWN OF
RAMAPO, THE TOWN OF RAMAPO, SCENIC
DEVELOPMENT, LLC
46-52 WADSWORTH TERRACE CORP., NEWFIELD
ESTATES INC., SCENIC DEVELOPMENT SM, LLC,
KEY BANK NATIONAL ASSOCIATION, MODEST
HOLDINGS, LLC and ISAAC LEBOVITZ

Respondents -Defendants

-----X
Hon. Thomas E. Walsh II, J.S.C.

The following papers numbered 1- 4 were read on a Notice of Motion by Petitioners-
Plaintiffs for an order pursuant to New York State *Civil Practice Law and Rules* § 2221 granting
leave to renew the Court's June 30, 2016 Decision and Order in this proceeding (the "2016 Court
Decision") based upon new facts and/or law - specifically the issuance of relevant decisions by
the Appellate Divisions, Second Department - and, upon renewal, to vacate and set aside three
(3) Decisions issued by the Town of Ramapo Planning Board, which were filed with the Town of

Ramapo Clerk on January 28, 2016, which granted applications by Scenic Development and Scenic Development LLC for: (I) Revised Final Subdivision Approval for a Project entitled Patrick Farm Subdivision, (ii) Revised Final Site Plan Approval for a Project entitled Patrick Farms Condominiums, and (iii) Final Site Plan Approval for a Project entitled Patrick Farm Volunteer Housing:

PAPERS

NUMBER

Notice of Motion/Affirmation of Daniel M. Richmond, Esq./Exhibits (A-F)	1
Affirmation of Terry Rice, Esq.	2
Reply Affirmation of Daniel M. Richmond, Esq.	3
Affirmation of Janice Gittleman, Esq.	4

A motion to renew is based upon new facts not offered on the prior motion which would change the prior determination or, will demonstrate that there has been a change in the law that would change the prior determination. [*Civil Practice Law and Rules* § 2221]. A motion for leave to renew is the proper manner in which a party seeks relief from a prior order based on a change in the law. [*Civil Practice Law and Rules* § 2221(e)(2); *Dinallo v. DAL Elec.*, 60 AD3d 620 (2d Dept 2009); *Roundabout Theatre Co. v. Tishman Realty & Constr. Co.*, 302 AD2d 272 (1 Dept); *5151 Avenue I Corp. v. 515 Avenue I tenants Corp.*, 44 AD3d 707 (2d Dept 2007)]. Specifically, “[a] clarification of the decisional law is a sufficient change in the law to support renewal.” [*Dinallo v. DAL Elec.*, 60 AD3d at 621;]. Further, a motion for leave to renew based upon a change in the law must be made prior to the entry of a final judgment or before the time to appeal has expired. [*Glicksman v. Board of Education Central School Bd. of Comsewogue Union Free School Dist.*, 278 AD2d 364, 365-366 (2d Dept 2000); *Daniels v. Millar Elevator Industries, Inc.*, 44 AD3d 895 (2d Dept 2007); *Eagle Ins. Co v. Persaud*, 1 AD3d 356 (2d Dept 2003)]. Additionally, motions for leave to renew are left to the sound discretion of the trial court. [*Washington Apts., L.P. v. Oetiker, Inc.*, 43 Misc3d 265, 267 (Sup Ct Erie Cty 2013); *Caryl S. v. Child & Adolescent Treatment Services, Inc.*, 238 AD2d 953 (4th Dept 1997)].

In the instant action the Petitioner is seeking leave to renew regarding the undersigned's June 30, 2016 Decision and Order and seeking the Court to vacate and set aside that Decision based upon a change in the law. The Petitioners submit that based on the Appellate Division, Second Department's November 2017 Decisions and Orders regarding the Patrick Farm Project, which "annulled multiple foundational bases of the 2016 planning Board Decisions" the Court's June 30, 2016 Decision and Order in the instant action should be vacated and set aside as the basis upon which the Court relied in the 2016 Decision has been changed. Specifically, Petitioners assert that the Appellate Division, Second Department's Decision addressed and annulled the SEQRA findings originally issued for the Patrick Farm Project, the zoning changes made by the Town Board of the Patrick Farm Project and the Town of Ramapo's amendment to its Comprehensive Plan which could have allowed Patrick Farm zone change. Further, Petitioners submit that the annulments of the aforementioned items in the Appellate Division Decision constitute changes in law that should alter the Court's 2016 Decision.

The Respondent argues that the undersigned's 2016 Decision and Order in the instant action should not be vacated, as the Petitioners have failed to provide new facts that were not known to the Petitioner at the time of the prior application. Further, Respondent submits that the Petitioner's reliance on the November 2017 Appellate Division Decisions is misplaced as the instant action does not involve the instant subdivision and site plan. Additionally, Respondent asserts that the Petitioner's remedy is to have filed a Notice of Appeal in the instant action and perfecting that appeal.

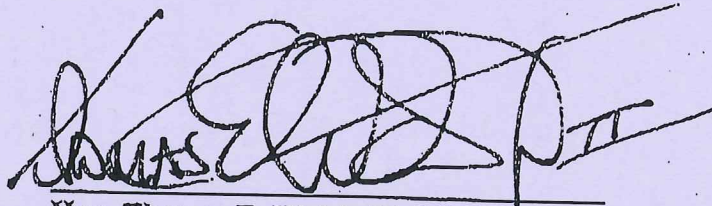
Renewal is warranted in the instant action based upon the Appellate Division's Decisions and Orders and the annulments made constitute a change in law. [Civil Practice Law and Rules § 2221(e)(2)]. The Decisions and Orders constitute a change in the law that is essential to and would have changed the Court's June 30, 2016 Decision and Order. The Court finds that based on the foregoing and a review of the Appellate Division's Decisions dated November 8, 2017 the motion is granted in its entirety.

In arriving at this decision the Court has reviewed, evaluated and considered all of the issues framed by these motion papers and the failure of the Court to specifically mention any particular issue in this Decision and Order does not mean that it has not been considered by the Court in light of the appropriate legal authority.

Accordingly, it is hereby
ORDERED that Petitioner's Notice of Motion for Leave to Renew (Motion #2) is
granted in its entirety.

The foregoing is the Court's Decision and Order as to Motion #2.

Dated: New City, New York
March 29, 2018



Hon. Thomas E. Walsh II, J.S.C.

TO:

DANIEL M. RICHMOND, ESQ.
ZARIN & STEINMETZ
Attorney for Petitioners/Plaintiffs
81 Main Street, Suite 415
White Plains, New York 10601
(via regular mail)

TERRY RICE, ESQ.
Attorney for Respondents Scenic Development LLC and Scenic Development SM LLC
Four Executive Boulevard
Suite 100
Suffern, New York 10901
(via regular mail)

JANICE GITTLEMAN, ESQ.
MICHAEL L. KLEIN, ESQ.
Attorney for the Town of Ramapo
237 Route 59
Suffern, New York 10901
(via regular mail)