Chambers v. Old Stone Hill: Court of Appeals Rejects Public Policy Argument and Declines to Extinguish Private Contractual Rights

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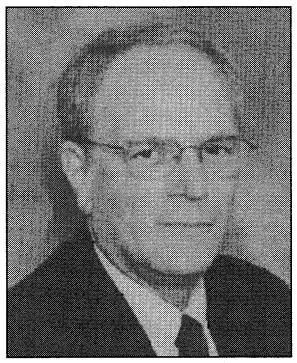

In a case of first impression, the Court of Appeals in *Chambers v. Old Stone Hill Road Associates*[1] recently established that the Telecommunications Act of 1996[2] does not trump the rights of private landowners to enforce restrictive covenants. At issue was the construction of a wireless telecommunications facility consisting of a 120-foot monopole (along with a 660-square-foot two-story equipment building and commercial parking lot) (the "Facility") in the middle of a rural section of the Town of Pound Ridge, New York, surrounded by single-family homes. The Supreme Court determined,[3] as affirmed by the Appellate Division,[4] that the restrictive covenant at issue prohibited the Facility's construction. And in a six-to-one decision, the Court of Appeals affirmed both lower court decisions.[5]

Factual and Procedural Background

The restrictive covenant at issue, which burdens the defendant-developer Old Stone Hill's land, restricted use of the property to single-family homes. Plaintiffs are landowners and homeowners whose property is benefited by the restrictive covenant. Old Stone Hill subdivided and developed a larger parcel for single-family residential use and actually sold one parcel of land to two of the plaintiffs (the Chambers). Thereafter, Old Stone Hill abandoned the development of single-family homes and entered into a lease with defendant Verizon to place the Facility in close proximity to Plaintiffs' homes.

As ultimately determined by the courts, Old Stone Hill's action violated the restrictive covenant, which restricted development to single-family homes and limited the use to residential purposes. The restrictive covenant provided that grantee shall:

> not erect or permit upon any portion of the said premises any building except detached residential dwelling houses each for occupancy and use of one family . . . excepting, however, the garages or other private buildings used in connection with such occupancy. . . .

And further specifically prohibited any commercial enterprises as it barred:

> any trade or business **whatsoever**, or any boarding house, vacation resort, hospital or convalescence home, restaurant, or any establishment for the sale or consumption of liquor, or for any other purpose which might be characterized or deemed by other residents of the locality to be a nuisance.

In assessing Verizon's application to construct the Facility, the Town Board of the Town of Pound Ridge considered various sites, including the Old Stone Hill's parcel of land, as well as land owned by the Town's Department of Public Works. The Town ultimately approved the Facility's construction on Old Stone Hill's land, finding that this site was the most likely to result in a "single site solution" for wireless service in the Town. But before the issuance of any permit to Verizon (including both the special permit and the building permit), Plaintiffs commenced this action against the defendants Old Stone Hill and Verizon to enforce the restrictive covenant.[6] In addition, once the special permit was issued, Chambers (and two other plaintiffs) commenced a separate Article 78 proceeding against the Town of Pound Ridge seeking to overturn the Town Board's decision granting Verizon the special permit.[7]

The parties cross-moved for summary judgment in this action. Plaintiffs claimed there was no issue of fact as to the applicability of the restrictive covenant to Old Stone Hill's property. Defendants claimed that since the Facility was now constructed, Plaintiffs were guilty of laches. Further, Defendants claimed

that the restrictive covenant did not apply to Old Stone Hill's property and was vague. Alternatively, Defendants argued that the restrictive covenant provided no substantial benefit to Plaintiffs and therefore, should be extinguished under the provision of Real Property Actions and Proceedings Law § 1951 ("RPAPL").

The Supreme Court granted Plaintiffs' motion on two of its causes of action. The Court issued an injunction finding that Plaintiffs' lands were benefited by the restrictive covenant and that the restrictive covenant clearly prohibited the Facility. The Court found that Defendants were put on notice in this action as well as in the Article 78 proceeding, that Plaintiffs were seeking to prohibit the Facility, but Defendants nonetheless, proceeded "at their own peril" and constructed the Facility while the action was pending. Noting that the action was commenced before any permits were issued, the Court found the Plaintiffs were not guilty of laches. Further, the Court found that Defendants' actions were committed with knowledge that they were acting in violation of the restrictive covenant, and the Court ruled that Defendants' position "does not appeal to the equitable conscience." Finally, the Court held that the Facility had a potential impact on the value of the Plaintiffs' property and therefore the restrictive covenant was of sufficient benefit to the Plaintiffs to avoid extinguishing the restrictive covenant under RPAPL § 1951. Thus, the Supreme Court issued a permanent injunction against the violation of the restrictive covenant and ordered the Facility's removal.

In a companion decision issued that same day, however, the Supreme Court denied the Article 78 petition.[8] The Court ruled that the Town Board's decision was not arbitrary and capricious in approving the special permit and that the decision had a rational basis. No appeal was taken from this determination.

The Defendants appealed from the Supreme Court's decision ordering the Facility's removal. Although the Defendants abandoned many of the arguments made before the Supreme Court, they raised for the first time on appeal to the Appellate Division, Second Department, that the restrictive covenant's enforcement violates the Telecommunications Act of 1996[9] ("TCA"). But in upholding the Supreme Court's decision, the Second Department concluded that the TCA did not "expressly or impliedly preempt" private citizens from enforcing restrictive covenants.[10]

Defendants sought leave to appeal from the Court of Appeals, which the Court granted.[11]

Court of Appeals' Decision

The Court of Appeals considered this matter of first impression—whether the TCA preempted Plaintiffs from enforcing the restrictive covenant—and in so doing, explained and reaffirmed two of its previous decisions. The restrictive covenant's intent was to preserve the neighborhood's residential character, which the Court of Appeals ruled was a reasonable limitation. In upholding the restrictive covenant, the Court rejected Defendants' two challenges to its enforcement: (i) that the restrictive covenant offends public policy and therefore, Plaintiffs' contractual rights should yield to public policy; and (ii) that the restrictive covenant should be extinguished under RPAPL § 1951.

Public Policy: the TCA

The Defendants argued that the enforcement of the restrictive covenant was tantamount to a prohibition of service in violation of the TCA, because enforcement of the restrictive covenant would eliminate the only wireless site in the Town. The TCA provides that a state's or local government's regulation "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."[12] Defendants claimed that enforcing the restrictive covenant would effectively prohibit wireless service in the Town of Pound Ridge.

The Court of Appeals explained that the Town Board's finding that Old Stone Hill's site "might be the best single site solution"[13] did not mean that Old Stone Hill's site was the *only site* capable of providing wireless coverage in Pound Ridge. Even though Old Stone Hill's site may have had the best chance of being the only site necessary to meet the telecommunication needs of Pound Ridge and another site may have required additional antennas, citing *Sitetech Group Ltd. v. Board of Zoning Appeals of the Town of Brookhaven*,[14] the Court ruled that Old Stone Hill's site was *not* the only site in Pound Ridge that could accommodate a wireless facility. In *Sitetech*, the United States District Court, Eastern District of New York upheld a zoning board's denial of a special use permit on the grounds that there were alternate sites even though the alternate sites would not have completely closed the gaps and would have required the erection of additional antennas. The Court of Appeals also noted that the Town itself conceded that there were alternate sites and that during the review process, Verizon was alternatively considering and applied for another site (on land owned by the Town). Thus, the Court held that Plaintiff's contractual right (the restrictive covenant) "in no way

denies wireless telecommunications services in the Town of Pound Ridge."[15]

Further, the majority of the Court addressed the dissent's purported reliance upon a leading Second Circuit TCA case, *Sprint Spectrum, L.P. v. Willoth*[16] and ruled that *Willoth* was inapposite for three reasons. First, unlike in *Willoth*, the issue in this case was the enforceability of the restrictive covenant and not the Town's "separate and distinct" authority to grant the permit.[17] Second, the TCA's ban against the prohibition of wireless service applies to "State or local government(s) or instrumentalit(ies)," not individual citizens' efforts to enforce their rights. Third, *Willoth* did not involve private contract rights as that case involved a municipality's rejection of a wireless service application. Further, the Court of Appeals noted that the Second Circuit declined to place the TCA's public policy over all other considerations, as the Second Circuit held that: "[w]e do not read the TCA to allow the goals of increased competition and rapid deployment to trump all other important considerations, including the preservation of the autonomy of the states and municipalities."[18]

Public Policy: *Knowlton* and *Crane*

The Court also rejected Defendants' policy argument that the Town Board's granting of the special permit negated the restrictive covenant and that the decision in the companion Article 78 proceeding upholding the issuance of the special permit precluded Plaintiffs from enforcing the restrictive covenant. The Court relied on its decision in *Friends of the Shawangunks, Inc. v. Knowlton*,[19] where the Court held that "a particular use of land may be enjoined as in violation of a restrictive covenant, although the use is permissible under the zoning ordinance."[20] Conversely, the *Knowlton* Court held that a permit for a use allowed by a zoning ordinance "may not be denied because the proposed use would be in violation of a restrictive covenant."[21] Thus, the Town Board's issuance of the special permit to construct the Facility is wholly "separate and distinct" from Plaintiffs' right to enforce the restrictive covenant. The Court specifically relied upon *Knowlton's* pronouncement that:

> the use that may be made of land under a zoning ordinance and the use of the same land under an easement or restrictive covenant are, as a general rule separate and distinct matters, the ordinance being a legislative enactment and the easement or covenant a matter of a private agreement.[22]

The Court held the Town Board, therefore, could not consider the restrictive covenant nor deny Verizon's application based upon the restrictive covenant. In addition, the Town Board could not enforce the restrictive covenant—only Plaintiffs could enforce that private right. By separately dismissing the Article 78 proceeding challenging the issuance of the Special Permit in one decision and on the same day issuing a decision enforcing the restrictive covenant, the Court determined that the Supreme Court correctly refused to allow the Town Board's decision to override Plaintiffs' contractual rights. In conclusion, the Court of Appeals determined that the Defendants and the Town could not negate the restrictive covenant by simply ignoring it and proceeding with the permit process and construction.[23]

The Court also rejected Defendants' interpretation of its decision in *Crane Neck Ass'n, Inc. v. City of New York City/Long Island County Services Group*[24] to support their argument that the restrictive covenant violates public policy. In *Crane*, there was a specific legislative enactment precluding or curtailing even local municipal input and selection of appropriate locations for certain facilities.[25] In that decision, the Court extended the statute's reach by voiding a restrictive covenant that prohibited such a facility, holding that the statute could not have intended to grant private parties greater authority than municipalities in locating these facilities. But the Court of Appeals found that no analogy could be made between the legislative enactment in *Crane* (the Mental Hygiene Law) and the TCA. Unlike the Mental Hygiene Law, the TCA expressly preserves local authority over the location and placement of wireless communications towers and therefore, specifically permits municipalities to restrict the use at particular sites.

In ruling that the enforcement of the restrictive covenant in that case would be contrary to public policy, the *Crane* Court extended the Mental Hygiene Law to private contracts. There, the restrictive covenant limited the use of the premises to a "single family dwelling," and therefore, necessarily prohibited a group home for eight mentally disabled individuals who were in need of uninterrupted supervision. The relevant statute in *Crane*—the Mental Hygiene Law—was enacted to provide for the fair distribution of community residences for the mentally disabled and to prevent "legal battles that had impeded the community residence program."[26]

Unlike the TCA, the Mental Hygiene Law does not give municipalities approval authority—only the

right to object. Mental Hygiene Law § 41.34, entitled "site selection of community residential facilities," removed from local government the discretion to plan the location of community residential facilities for the mentally disabled. Specifically, once a site has been proposed for a residential facility for the disabled, a municipality must, within forty (40) days, either: (i) approve the proposed site; (ii) "suggest one or more suitable sites" within its jurisdiction which could accommodate such a facility; or (iii) object to the facility on the basis that there will be a "concentration" of community residential facilities for the mentally disabled.[27] In the event a municipality objects to a site on the basis of a concentration of facilities, Mental Hygiene Law § 41.34 provides for an expedited resolution as the statute: (i) gives the sponsoring agency the right to request an "immediate hearing;"[28] (ii) requires that a hearing be conducted within fifteen days of the request;[29] and (iii) mandates that a decision be rendered within thirty (30) days of the hearing.[30] In reviewing an objection, a reviewing authority under the Mental Hygiene Law may only consider the need for facilities and the "existing concentration"[31] of such facilities. A municipality's objection may only be sustained if "the nature and character of the area in which the facility is to be based would be substantially altered as a result of the establishment of the facility."

The *Crane* Court in extending the Mental Hygiene Law's reach to private contracts noted that if municipalities were not permitted to regulate the location of such facilities, the legislature clearly did not intend to grant private individuals greater authority. Accordingly, in noting the state's ability to impair private contracts to protect the general good of the public, the *Crane* Court held that the state's interest "in protecting the welfare of mentally and developmentally disabled individuals" trumped private contract rights. Thus, that Court ruled that the restrictive covenant could not be equitably enforced.

Here, the Court of Appeals held that in contrast to the Mental Hygiene Law in *Crane*, Congress expressly recognized the importance of local land use authority under the TCA and the TCA specifically preserves local planning and zoning. Congress in the TCA preempted jurisdiction over wireless telecommunications facilities except that it also specifically chose to "preserve *all local zoning authority* 'over decisions regarding the placement, construction, and modification of personal wireless service facilities.'"[32] Thus, the Court held that "there is no comparable public policy being transgressed, indeed no preemption that might motivate the Court to extend a statutory mandate to extinguish private rights."[33]

RPAPL § 1951

In addition, the Court rejected Defendants' argument that the restrictive covenant should be extinguished under RPAPL § 1951. The Court reiterated the standard it established in *Orange and Rockland Utilities, Inc. v. Philwold Estates, Inc*,[34] to extinguish a restrictive covenant under RPAPL § 1951: "[t]he issue is not whether [the party seeking the enforcement of the restriction] obtains any benefit from the existence of the restriction but whether in a balancing of the equities it can be, in the wording of the statute, 'of *no* actual and *substantial benefit*.'"[35] The Court noted that both lower courts found that Defendants failed to demonstrate that Plaintiffs did not derive a benefit from the restrictive covenant and "given the ample support in the record" for this conclusion, this affirmed factual finding was beyond the scope of the Court's review.

Further, the Court also ruled that the lower courts properly balanced the equities finding that the lower courts discounted Verizon's alleged hardship. The Appellate Division determined that the Defendants' hardships are "largely self-created,"[36] because they proceeded to construct the cellular tower even though they had knowledge of the restrictive covenant and Defendants' intent to enforce the covenant. Again, the Court held that these affirmed factual findings were supported by the record and beyond the scope of its review.

Conclusion

The Court's ruling is important from a general perspective in that it clarifies the Court of Appeals' position on several significant land use issues.

First, it makes clear that the provision of wireless services, while important, does not override all other considerations. The availability of alternative sites, even when the result may be to require more than one site, removes any claim that the inability to construct a wireless facility at a specific site, in and of itself, constitutes a prohibition of wireless service.

Second, private restrictive covenants, when they are clear and provide a benefit, are enforceable against the erection of wireless facilities.

Third, it limited the application of the *Crane* case to situations where there is a clear restriction on municipal authority.

Last, the Court reaffirmed, in the clearest language, that there is a separation between the obligations of a municipality to grant permits and the right to enforce private agreements restricting the use of land as established by the Court in *Knowlton*.

Endnotes

1. 2004 WL 330080 (February 24, 2004).
2. 47 USC § 151 *et seq.*
3. *Chambers v. Old Stone Hill Road Assoc.* (Sup. Ct., Westchester Co., Index No. 00-044475, Cowhey, J., November 14, 2001).
4. *Chambers v. Old Stone Hill Road Assoc.*, 303 A.D.2d 536, 757 N.Y.S.2d 70 (2d Dep't 2003).
5. *Chambers v. Old Stone Hill Road Assoc.*, 2004 WL 330080 (February 24, 2004).
6. *Chambers v. Old Stone Hill Road Assoc.* (Sup. Ct., Westchester Co., Index No. 00-044475, Cowhey, J., November 14, 2001).
7. *Sorkin v. Simkins* (Sup. Ct., Westchester Co., Index No. 7498/00, Cowhey, J., November 14, 2001).
8. *Id.*
9. 47 USC §§ 151 *et seq.*
10. *Chambers v. Old Stone Hill Road Assoc.*, 303 A.D.2d 536, 538, 757 N.Y.S.2d 70, 71 (2d Dep't 2003).
11. *Chambers v. Old Stone Hill Road Assoc.*, 100 N.Y.2d 506, 763 N.Y.S.2d 812 (2003).
12. 47 USC § 332(c)(7)(B)(i)(II).
13. *Chambers* at 2 *(unofficial page cite).*
14. 140 F. Supp. 2d 255 (E.D.N.Y. 2001).
15. *Chambers* at 2 *(unofficial page cite).*
16. 176 F.3d 630 (2d Cir. 1999).
17. *Chambers* at 4 *(unofficial page cite), relying upon Knowlton, see infra.*
18. *Chambers* at 4 *(unofficial page cite), relying upon Willoth* at 639.
19. 64 N.Y.2d 387, 487 N.Y.S.2d 543 (1985).
20. *Id.* at 392.
21. *Id.*
22. *Id.*
23. *Chambers* at 4 *(unofficial page reference).*
24. 61 N.Y.2d 154, 472 N.Y.S.2d 901 (1984), *cert denied*, 469 U.S. 804 (1984).
25. Mental Hygiene Law § 41.34.
26. *Crane* at 163.
27. Mental Hygiene Law § 41.34(c)(1).
28. Mental Hygiene Law § 41.34(c)(5).
29. *Id.*
30. *Id.*
31. *Id.*
32. *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999) (emphasis added); 47 U.S.C. § 332(c)(7).
33. *Chambers* at 3 *(unofficial page cite).*
34. 52 N.Y.2d 253, 418 N.E.2d 1310, 437 N.Y.S.2d 291 (1981).
35. *Chambers* at 3 *(unofficial page cite), relying upon Orange & Rockland Util. v. Philwold Estates*, 52 N.Y.2d 253 (1981) (emphasis in original).
36. *Chambers* at 3 *(unofficial page cite), relying upon Chambers v. Old Stone Hill Road Assoc.*, 303 A.D.2d 536, 537, 757 N.Y.S.2d 70 (2d Dep't 2003).

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