The Third Department Gives Some Teeth to the Statutory Protections Afforded to Conservation Easements under the Environmental Conservation Law

By Phillip Oswald

The Third Department issued an important decision recently that broadened the protections available to conservation easements. The decision in *Argyle Farm & Properties, LLC v. Watershed Agricultural Council of the N.Y. City Watersheds, Inc.* involved a dispute between the holder of a conservation easement and the owner of the encumbered property.[1] The easement was held by the Watershed Agricultural Council of the New York City Watersheds (the "WAC"), which acquires conservation easements on upstate properties in order to protect the water supply for New York City (the "City").[2] In addition to acquiring conservation easements, the WAC also administers voluntary land-use programs that ensure that only "best [agricultural] management practices" occur on the properties.[3] Since the City is restricted from directly regulating these properties by the Agriculture and Markets Law, it relies on these voluntary agreements with landowners to ensure that contaminants do not enter the streams and reservoirs that supply its water.[4]

The plaintiff owned the subject property, which consisted of 475 acres in the Pepacton Basin.[5] Six years after purchasing the property, the plaintiff sold a conservation easement on the property to the WAC.[6] Prior to closing on the easement, however, the plaintiff began converting a barn on the property into a residence, which required the installation of a septic system.[7] After the easement was conveyed, a dispute arose with respect to the location of the septic system because it was located in an area that was outside of the designated building area on the property.[8]

The WAC nevertheless negotiated with the plaintiff in an attempt to maintain the easement, even with the septic system being located in a prohibited area.[9] The WAC even offered to grant the plaintiff an exception to the building restrictions, or to modify the terms of the easement as necessary to bring the septic system into compliance with those terms at no cost to the plaintiff.[10] The plaintiff refused the offer because it apparently still was concerned about the effect of the easement on its ability to use and market its title in the future.[11] As a result, the plaintiff commenced a lawsuit against the WAC, *inter alia*, seeking to rescind the easement, or, alternatively, seeking a judicial declaration that interpreted the easement in a manner that permitted the location of the septic system.[12]

The WAC filed a motion to dismiss the complaint, which was granted by the trial court.[13] The main grounds for the WAC's motion were lack of standing, expiration of the statute of limitations, and failure to join a necessary party.[14] The statutory protections that are afforded to conservation easements under Article 49 of the Environmental Conservation Law (the "ECL") were not the primary defenses raised by the WAC, but, instead, were ancillary to the defenses discussed above.[15] In fact, the ECL protections constituted only about a page and a half of the trial court's 16-page decision.[16]

When the case came before the Third Department Appellate Division, however, the court seemingly brushed aside the primary grounds for the WAC's motion. The court issued a 6-page decision that upheld the dismissal, largely on the basis of the protections under the ECL.[17] The Third Department's decision is groundbreaking in New York because it executes and gives effect to the important conservation policies of the state. Specifically, the decision substantially expands the protections that are afforded to conservation easements under the ECL, and strictly limits declaratory-judgment actions that seek an interpretation of these easements.

1. Section 49-0305 of the ECL Is Given an Expansive Interpretation to Protect Conservation Easements From Defenses to Enforcement That Are Not Specified in the Text of That Statute

The first important point from the Third Department's decision in *Argyle Farm & Properties, LLC* is that the protections under section 49-0305 of the ECL were expanded beyond the text of that statute. The first five causes of action in the plaintiff's complaint were based on common-law defenses to contract formation and enforcement, including mutual mistake, misrepresentation, and frustration of contract.[18] Basically, the plaintiff claimed that the parties were mistaken as to whether a farming plan was in place for the property as necessary for a WAC-held easement, that the WAC misled the plaintiff with respect to the WAC's procedures, and that the parties' intent in entering the easement was frustrated due to the lack of a farming plan.[19] In light of these allegations, the plaintiff asserted that it was entitled to rescind the conservation easement.[20]

At the outset, the plaintiff's reliance on these defenses was not misplaced because they are not eliminated as defenses to conservation easements by section 49-0305, which abolishes several traditional defenses to ordinary easements by making those defenses inapplicable to conservation easements.[21] These traditional defenses include, *inter alia*, a lack of appurtenance, a failure to touch and concern, the defense against negative burdens, a lack of privitiy, and adverse possession.[22] Thus, the plaintiff's

attempt to raise these common-law contractual defenses was a plausible theory for rescission because an instrument that conveys an easement essentially is treated as a contract[23] and these contractual defenses were omitted from the text of section 49-0305,[24] thereby arguably signaling a legislative intent not to protect conservation easements from them.[25] This may explain why the protections under section 49-0305 were not the primary, secondary, or even tertiary arguments raised by the WAC on its motion or in response on appeal.[26]

Nevertheless, the Third Department held that section 49-0305 applies broadly to encompass all "defenses that exist at common law," including the defenses to contract formation and enforcement that the plaintiff raised in its complaint.[27] The omission of these common-law contractual defenses from the statutory text of section 49-0305 did not preclude the Third Department from applying that statute to those defenses.[28] The Third Department reasoned that "[c]onservation easements are of a character *wholly distinct* from the easements traditionally recognized at common law and are excepted from many of the defenses that would defeat a common-law easement."[29] The Third Department cited the Bill Jacket for section 49-0305 and further reasoned that this statute manifested an intentional legislative acknowledgement of this distinction, thereby compelling courts to provide differential treatment to conservation easements.[30]

Thus, the Third Department reasoned that the omission of these common-law contractual defenses from the list of defenses in section 49-0305 was not an intentional omission by the legislature.[31] Instead, the legislative history "made clear" that protecting conservation easements from these defenses is consistent with the legislative policy of protecting these easements from the generic, common-law grounds that can be used to defeat a traditional easement.[32] In fact, this decision can be read to hold that a conservation easement will be unenforceable only under the limited grounds for amendment or termination[33] that are provided for in section 49-0307 of the ECL.[34] This broad interpretation of the legislative intent behind section 49-0305 is supported by the statutory codification of the important public policies that conservation easements serve.[35] Essentially, this interpretation of section 49-0305 constitutes a significant advance in protecting conservation easements and the policies that they affect by ensuring that enforcement of these easements will survive all but a very limited set of challenges.

2. Landowners Cannot Seek to Reform the Terms of a Conservation Easement by Artfully Pleading a Declaratory Judgment Action That Seeks an "Interpretation" of Those Terms

The second important point from the Third Department's decision in *Argyle Farm & Properties, LLC* is that a landowner cannot obtain a judicial amendment of a conservation easement by artfully pleading a declaratory judgment action. In addition to the contractual claims asserted in plaintiff's complaint, the plaintiff also sought an "interpretation" of the terms of the easement under Article 15 of the Real Property Actions and Proceedings Law (the "RPAPL").[36] In other words, the plaintiff sought a declaratory judgment stating that construction of the septic system was permitted under the terms of the easement.[37] The Third Department, however, was not fooled by the plaintiff's attempt to use a declaratory-judgment action to obtain a judicially compelled amendment of the easement. In addressing these claims, the court reasoned that the "[p]laintiff *effectively* is seeking to *reform* the easement, and it is readily apparent that the *'interpretation'* advanced by plaintiff in this regard would result in either the termination of the easement itself or a material *amendment* thereto."[38]

Accordingly, the Third Department reasoned that in order for the plaintiff to succeed in obtaining a declaratory judgment, which effectively amended or terminated the easement, the plaintiff would need to establish that one of the grounds in section 49-0307 of the ECL applies.[39] The plaintiff had to satisfy section 49-0307 because section 49-0305 provided that a conservation easement can be amended or terminated only in accordance with the grounds that are provided for in section 49-0307.[40] Under section 49-0307, the "exclusive means" for the amendment or termination of a conservation easement are: (1) in accordance with the terms of the easement; (2) in a proceeding under section 1951 of the RPAPL; or (3) by eminent domain.[41] The Third Department determined that the action was "not in the nature of an RPAPL 1951 proceeding or an eminent domain proceeding."[42] Thus, the only ground available to the plaintiff was the first—the terms of the easement.[43]

The terms at issue, however, permitted for amendment or termination of the easement only upon mutual consent, with termination also requiring changed conditions, which prevent the continued accomplishment of the conservation easement's purpose.[44] Since neither consent nor changed conditions were present, the court held that the amendment or termination that the plaintiff sought was unavailable.[45] Therefore, the Third Department upheld the dismissal of the plaintiff's claims seeking a declaratory judgment interpreting the easement, because that proposed interpretation would have essentially amended the easement, and none of the "statutorily recognized grounds" for amendment were applicable.[46]

Thus, the Third Department's decision effectively held that landowners cannot circumvent the restrictions under a conservation easement by seeking an "interpretation" of that easement in a manner that would effectively abrogate one or several of those restrictions.[47] The Third Department even put the term "interpretation" in quotations in its decision when referring to the relief that the plaintiff was demanding, thereby signaling the court's

skepticism of the plaintiff's artful characterization of its claims in this respect.[48] In sum, landowners cannot reform the terms of a conservation easement through a declaratory judgment action. Instead, consistent with the legislative treatment of conservation easements, the amendment or termination of these easements is strictly limited to the exclusive means provided for in section 49-0307 of the ECL.[49]

3. Conclusion

The Third Department's decision in *Argyle Farm & Properties, LLC* constitutes a significant victory for the conservation community by acknowledging the importance of conservation policies and giving practical effect to those policies. This includes affording greater protections to conservation easements, which are an important land-use tool in effectuating conservation policies. Under this decision, a landowner cannot violate a conservation easement—including the act of building first, and asking for permission later—and subsequently seek judicial ratification of this conduct via a judicial "declaration" or "interpretation" of the terms of the easement. While other New York courts have cursorily passed upon the important policies underlying conservation easements,[50] the Third Department went further by giving practical effect to these policies.

Additionally, the decision is a manifestation of judicial willingness to consider conservation policies in the decision-making process. The attention which the court gave to these ECL protections in its decision, especially when the protections were not a central issue in the lower court's decision, cannot be understated.[51] This is an important indication that the judiciary will stand behind the legislative policies on this issue. In sum, this decision is a valuable shield that will protect conservation easements against challenges that likely will increase as many conservation properties transition into second-generation ownership.

Endnotes

1. 2016 N.Y. App. Div. LEXIS 562 at *1-*5, 2016 NY Slip Op. 00559, 1-2 (3d Dep't Jan. 28, 2016).
2. *Id*. at *1-*3.
3. *Id*. at *2.
4. *See id*. at *1-*2; *see also Argyle Farm & Props., LLC v. Watershed Agric. Council of the N.Y. City Watersheds, Inc.*, Index No. 2013-1270 at 4 (N.Y. Sup. Ct. Delaware Cnty. Oct. 17, 2014) (the trial court's decision); N.Y. Agric. & Mkts. Law § 305-a (McKinney 2016) (precluding local governments from "unreasonably" regulating agricultural operations).
5. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *2.
6. *Id*. at *2, *3.
7. *Id*. at *3-*4.
8. *Id*.
9. *Id*. at *4.
10. *Id*.; *Argyle Farm & Props.*, Index No. 2013-1270 at 10.
11. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *4-*5; *Argyle Farm & Props.*, Index No. 2013-1270 at 10.
12. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *5.
13. *Id*. The City and the New York City Department of Environmental Protection also were defendants and also moved to dismiss the complaint. *Id*.
14. *Id*.
15. *Id*.
16. *See generally Argyle Farm & Props.*, Index No. 2013-1270 at 13-15.
17. *See Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *5-*7 (the Third Department assumed the standing, timeliness, and joinder issues in favor of the plaintiff and proceeded to uphold the dismissal of the complaint on the ECL provisions that are specific to conservation easements).
18. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7.
19. Compl., *Argyle Farm & Props., LLC v. Watershed Agric. Council of the N.Y. City Watersheds, Inc.*, Index No. 2013-1270 (Dec. 31, 2013) ¶¶ 180-82, 193-94, 208-12, 231-33, 249-50.
20. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7.
21. N.Y. Envtl. Conserv. Law § 49-0305(5) (McKinney 2016).
22. *Id*.
23. *See Somers v. Shatz*, 22 A.D.3d 565, 567, 802 N.Y.S.2d 245, 246 (2d Dep't 2005) (applying traditional rules of contract interpretation to interpret the grant of an easement); *Route 22 Assocs. v. Cipes*, 204 A.D.2d 705, 706, 613 N.Y.S.2d 33, 33 (2d Dep't 1994) (same).
24. *Id*.
25. *See Jewish Home & Infirmary v. Comm'r of N.Y. State Dep't of Health*, 84 N.Y.2d 252, 262, 640 N.E.2d 125, 129, 616 N.Y.S.2d 458, 462 (1994) (in the context of statutory interpretation, the maxim *expressio unius est exclusio alterius* imposes the judicial presumption that the legislature intended to omit a proviso from the ambit or effect of a statute when that proviso is omitted from a statute that includes a list of other provisos).
26. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *5; *Argyle Farm & Props.*, Index No. 2013-1270 at 13-15.
27. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7.
28. *Id*.
29. *Id*. at *6-*7 (emphasis added) (quoting *Stonegate Family Holdings, Inc. v. Revolutionary Trails, Inc., Boy Scouts of Am.*, 73 A.D.3d 1257, 1261, 900 N.Y.S.2d 494, 499 (3d Dep't 2010), *lv. denied*, 15 N.Y.3d 715, 939 N.E.2d 809, 913 N.Y.S.2d 643 (2010); *Friends of Shawangunks, Inc. v. Knowlton*, 64 N.Y.2d 387, 393, 476 N.E.2d 988, 991, 487 N.Y.S.2d 543, 546 (1985)).
30. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7 (citing N.Y. Envtl. Conserv. Law § 49-0305 and Mem. of Support, Bill Jacket, 1983 N.Y. Laws ch. 1020 (1983)).
31. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7.
32. *Id*. (citing N.Y. Envtl. Conserv. Law § 49-0305 and Mem. of Support, Bill Jacket, 1983 N.Y. Laws ch. 1020 (1983)).
33. Out of convenience for the reader, the terms "amendment" and "termination" will be used for the purposes of this article, since the Third Department uses these terms interchangeably with the terms "modification" and "extinguishment" in its decision. The text of section 49-0307, however, is limited to the terms "modification" and "extinguishment." N.Y. Envtl. Conserv. Law § 49-0307(1).
34. *See Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7 (implying that only the grounds that are identified in section 49-0307 of the ECL can be relied upon to avoid the enforcement of conservation easements because one of the grounds for upholding the dismissal of the contractual-defense causes of action was that those defenses are not set forth in section 49-0307).

35. N.Y. Envtl. Conserv. Law § 49-0301 (codifying "the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources").
36. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7; *Argyle Farm & Props.*, Index No. 2013-1270 at 6.
37. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *7-*8.
38. *Id*. at *7 (emphasis added).
39. *Id*. at *6-*8.
40. *Id*. at *6; N.Y. Envtl. Conserv. Law § 49-0305(2).
41. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *6; N.Y. Envtl. Conserv. Law § 49-0307(1).
42. *Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *6.
43. *Id*. at *6-*7, *7-*8.
44. *Id*. at *6-*7.
45. *Id*. at *7-*8.
46. *Id*.
47. *Id*.
48. *Id.*
49. *Id*. at *6, *7-*8.
50. *See generally Smith v. Town of Mendon*, 4 N.Y.3d 1, 14, 822 N.E.2d 1214, 1221, 789 N.Y.S.2d 696, 703 (2004); *Friends of Shawangunks, Inc. v. Knowlton*, 64 N.Y.2d 387, 393, 476 N.E.2d 988, 991, 487 N.Y.S.2d 543, 546 (1985); *Stonegate Family Holdings, Inc. v. Revolutionary Trails, Inc., Boy Scouts of Am.*, 73 A.D.3d 1257, 1261, 900 N.Y.S.2d 494, 499 (3d Dep't 2010), *lv. denied*, 15 N.Y.3d 715, 939 N.E.2d 809, 913 N.Y.S.2d 643 (2010).
51. *See Argyle Farm & Props.*, 2016 N.Y. App. Div. LEXIS 562 at *5-*6 (again, the three grounds that were the foci of the appellate arguments by the defendants were standing, the statute of limitations, and non-joinder); *Argyle Farm & Props.*, Index No. 2013-1270 at 13-15 (same).

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