

STATE OF NEW YORK
SUPREME COURT COUNTY OF FULTON

JOHN J. LIVINGSTON, JR.,

ORDER

Petitioner/Plaintiff,

Index No.: 07829

-against-

Assigned Judge:
Richard A. Kupferman

TOWN OF CAROGA,
TOWN OF CAROGA TOWN BOARD,
JAMES K. SELMER, JEREMY MANNING,
JAMES LONG, KENT KIRCH, LINDA GILBERT and
FULTON COUNTY BOARD OF ELECTIONS.

Respondent/Defendant.

WHEREAS, the Plaintiff having brought the above-captioned action by way of Order to Show Cause and Verified Petition/Complaint duly filed on October 14, 2019 and made returnable before the Court on October 25, 2019, and the Defendants (Town of Caroga, Town of Caroga Town Board, James K. Selmer, Jeremy Manning, James Long, Kent Kirch and Linda Gilbert) having filed a Response to Plaintiff's Order to Show Cause on October 23, 2019, and to which the Defendant Fulton County Board of Elections submitted a letter from its counsel on or about October 22, 2019; and

WHEREAS, the subject litigation concerns a public referendum on the November 5, 2019 Ballot in the Town of Caroga that seeks to approve the sale of a particular piece of real property (formerly Sherman's Amusement Park) owned by the Town of Caroga to a non-profit entity. By way of background, the parcel of real property had previously been donated to the Town of Caroga by the Balboaa Land Development Corporation and said donation was the subject of companion litigation (Balboaa v. Town of Caroga, Fulton County Index Number 2019-07599).

The Plaintiff in commencing the instant litigation challenged the proposed sale of the property and sought to have the November 5, 2019 public referendum to be cancelled and removed from the November 5, 2019 Ballot or alternatively to have the results of the November 5, 2019 public referendum to be declared invalid.

WHEREAS, this matter having been assigned to the Court and a Hearing on the Order to Show Cause having been scheduled for October 25, 2019 whereupon counsel for the Plaintiff and counsel for the Defendants (counsel for Defendant Fulton County Board of Elections having been previously requested and permitted to be excused) were present; and

WHEREAS, the companion matter (Balboaa v. Town of Caroga, Fulton County Index Number 2019-07599) having likewise been scheduled for a conference on October 25, 2019 and whereupon counsel for Plaintiff Balboaa and counsel for the Defendant Town of Caroga, respectively, having advised the Court that the parties had entered into a Stipulation and Agreement resolving the underlying issue of that litigation and thus cancelling the proposed sale of the real property that was the subject of the November 5, 2019 public referendum; and

WHEREAS, the Court has had a full opportunity to review the pleadings and submissions by counsel for the Plaintiff and Defendants, the October 25, 2019 Stipulation and Agreement and its attached exhibits as well as the Resolution of the Defendant's Town Board giving authority of the Defendant to enter into said Stipulation and Agreement, and the Court having heard oral argument from counsel for the Plaintiff and Defendants on October 25, 2019, it is hereby:

ORDERED, that as a result of the October 25, 2019 Stipulation and Agreement between the parties on the companion litigation the subject sale of real property at issue in the Plaintiff's instant litigation is considered moot and thus the Plaintiff's Order to Show Cause and Verified

Petition/Complaint are hereby DISMISSED in their entirety and without prejudice; and it is further


ORDERED, that as a result of the October 25, 2019 Stipulation and Agreement the public referendum on the November 5, 2019 ballot is considered moot. However, given the practical inability (as the ballots had already been printed) to remove the public referendum from the 2019 Ballot, the results of said public referendum shall be considered a legal nullity and the Court directs the Defendant Fulton County Board of Elections to declare said result invalid; and it is further

ORDERED, that again given the practical inability (as the ballots had already been printed) to remove the public referendum from the 2019 Ballot, the Court directs that to the extent permissible under the New York State Election Law the Defendant Fulton County Board of Elections shall seal the results of said public referendum; and it is

SO ORDERED.

ENTER:

DATED: October 28, 2019



Hon. Richard Kupferman
Acting Supreme Court Justice
Fulton County Supreme Court