

Jones v. Town of Carroll, --- N.Y.S.3d ---- (2024)

2024 WL 1227620, 2024 N.Y. Slip Op. 01634

2024 WL 1227620

Supreme Court, Appellate Division,  
Fourth Department, New York.

Carol L. JONES, Individually and as Executor of the  
Estate of Donald J. Jones, Deceased, Jones-Carroll,  
Inc., and Sealand Waste LLC, Plaintiffs-Appellants,

v.

TOWN OF CARROLL and Town Board of  
Town of Carroll, Defendants-Respondents.

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CA 23-00120

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Entered: March 22, 2024

Appeals from an order of the Supreme Court, Chautauqua  
County (Grace Marie Hanlon, J.), entered December 9, 2022.  
The order dismissed three causes of action upon a nonjury  
verdict.

#### Attorneys and Law Firms

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PLAINTIFFS-APPELLANTS CAROL L. JONES,  
INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE  
OF DONALD J. JONES, DECEASED, AND JONES-  
CARROLL, INC.

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WASTE LLC.

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RESPONDENTS.

PRESENT: WHALEN, P.J., BANNISTER, MONTOUR,  
OGDEN, AND DELCONTE, JJ.

#### MEMORANDUM AND ORDER

\*1 It is hereby ORDERED that the order so appealed from  
is unanimously modified on the law by vacating the ordering

paragraphs dismissing the causes of action and granting  
judgment in favor of defendants as follows:

“It is ADJUDGED and DECLARED that Local Law No. 1  
of 2007 of the Town of Carroll is valid”

and as modified the order is affirmed without costs.

Memorandum: The facts and procedural history of this case  
are set forth in our decisions on the prior appeals (*Jones v  
Town of Carroll*, 32 AD3d 1216 [4th Dept 2006], *lv dismissed*  
12 NY3d 880 [2009]; *Jones v Town of Carroll* [appeal No. 1],  
57 AD3d 1376 [4th Dept 2008], *revd* 15 NY3d 139 [2010],  
*rearg denied* 15 NY3d 820 [2010] [*Jones I*]; *Jones v Town of  
Carroll* [appeal No. 2], 57 AD3d 1379 [4th Dept 2008] [*Jones  
II*]; *Jones v Town of Carroll*, 122 AD3d 1234 [4th Dept 2014],  
*lv denied* 25 NY3d 910 [2015] [*Jones III*]; *Jones v Town  
of Carroll*, 158 AD3d 1325 [4th Dept 2018], *lv dismissed*  
31 NY3d 1064 [2018] [*Jones IV*]; *Jones v Town of Carroll*,  
177 AD3d 1297 [4th Dept 2019] [*Jones V*]; *Jones v Town of  
Carroll*, 197 AD3d 1003 [4th Dept 2021] [*Jones VI*]).

As relevant to the present appeal, plaintiff Carol L. Jones  
and her husband, Donald J. Jones (decedent), owned property  
on a portion of which plaintiff Jones-Carroll, Inc. operated a  
construction and demolition landfill under permits obtained  
from the New York State Department of Environmental  
Conservation (DEC) (*see Jones III*, 122 AD3d at 1235).  
Plaintiff Sealand Waste LLC (Sealand) is a potential buyer  
of the property and had previously entered into an agreement  
with Jones, decedent, and Jones-Carroll, Inc. providing,  
among other things, that Sealand would test the suitability  
of the property for expansion of the landfill onto the entire  
parcel and then enter into contract negotiations to purchase  
the property. Sealand thereafter applied for a DEC permit for  
the proposed expansion and was denied a requested federal  
permit as a result of Local Law No. 1 of 2007 (2007 Law).  
The 2007 Law had been enacted by defendants and banned the  
operation of any solid waste management facility in defendant  
Town of Carroll (Town), but exempted, inter alia, such a  
facility then in operation pursuant to a permit issued by the  
DEC under the current terms and conditions of the existing  
operating permit (*see Jones III*, 122 AD3d at 1235-1236).  
Jones, decedent, and Jones-Carroll, Inc. commenced this  
action seeking, inter alia, a judgment declaring that the 2007  
Law is invalid on the bases that it violates substantive due  
process and is arbitrary and capricious. Sealand was granted

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status as an intervenor (see *Jones IV*, 158 AD3d at 1328). In 2022, the case proceeded to a bench trial on the causes of action asserting that the 2007 Law violates substantive due process and is arbitrary and capricious. At the close of trial, Supreme Court determined that plaintiffs had failed to prove their causes of action and dismissed them with prejudice. Plaintiffs appeal.

Where, as here, the appeal follows a nonjury trial, “the Appellate Division has ‘authority ... as broad as that of the trial court ... and ... may render the judgment it finds warranted by the facts’ ” (*Sweetman v Suhr*, 159 AD3d 1614, 1615 [4th Dept 2018], *lv denied* 31 NY3d 913 [2018], quoting *Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499 [1983]; see *Buchmann v State of New York*, 214 AD3d 1412, 1413 [4th Dept 2023]). “Nonetheless, the decision of the fact-finding court should not be disturbed upon appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence” (*Unger v Ganci* [appeal No. 2], 200 AD3d 1604, 1605 [4th Dept 2021] [internal quotation marks omitted]; see *Thoreson v Penthouse Intl.*, 80 NY2d 490, 495 [1992], *rearg denied* 81 NY2d 835 [1993]; *Davis v Hinds*, 215 AD3d 1242, 1243 [4th Dept 2023]). Moreover, when conducting such a

review, we must view the record “in the light most favorable to sustain the judgment” (*Farace v State of New York*, 266 AD2d 870, 871 [4th Dept 1999]; see *A&M Global Mgt. Corp. v Northtown Urology Assoc., P.C.*, 115 AD3d 1283, 1286 [4th Dept 2014]). Upon conducting that review, we conclude that there is a fair interpretation of the evidence supporting the court's well-reasoned determinations. We have considered plaintiffs' specific contentions, and we conclude that they do not require a different result.

\*2 Although we do not disturb the court's determination of the merits, we note that the court erred in dismissing the causes of action seeking declaratory judgment and should instead have made a declaration of the parties' rights (see *Pless v Town of Royalton*, 185 AD2d 659, 660 [4th Dept 1992], *affd* 81 NY2d 1047 [1993]; *Hirsch v Lindor Realty Corp.*, 63 NY2d 878, 881 [1984]; *Schlossin v Town of Marilla*, 48 AD3d 1118, 1119 [4th Dept 2008]). We therefore modify the order accordingly.

#### All Citations

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