

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

6889D
C/jv

_____ AD2d _____

Argued - March 9, 1999

DAVID S. RITTER, J.P.
MYRIAM J. ALTMAN
GLORIA GOLDSTEIN
LEO F. McGINITY, JJ.

97-10463
98-07988

Robert A. Ficalora, etc., appellant, v
Joseph Guarneri, et al., respondents.

DECISION & ORDER

Joel R. Kupferman, New York, N.Y., for appellant, and Robert A. Ficalora, Olympia, N.Y., appellant *pro se* (one brief filed).

Twomey, Latham, Shea & Kelley, Riverhead, N.Y. (Christopher Kelley of counsel), for respondents Joseph Guarneri and Joanne Guarneri.

Cahn Wishod & Knauer, LLP, Melville, N.Y. (Richard C. Cahn and Scott M. Karson of counsel), for respondent Town Board of Town of East Hampton.

In an action, in effect, to enjoin the defendants Joseph Guarneri and Joanne Guarneri from constructing a two-story, single-family home on the subject property, the plaintiff appeals from (1) an order and judgment (one paper) of the Supreme Court, Suffolk County (Underwood, J.), dated October 31, 1997, which, *inter alia*, in effect granted those branches of the cross motion of the respondents Joseph Guarneri and Joanne Guarneri, and the cross application of the respondent Town Board of the Town of East Hampton, which were to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, and dismissed the complaint, and (2) an order of the same court, dated July 29, 1998, which, after a hearing, granted the respondents' application to impose a sanction upon the plaintiff, and imposed a sanction upon the plaintiff in the principal sum of \$9,033.08.

ORDERED that the order and judgment dated October 31, 1997, is affirmed, without costs or disbursements; and it is further,

ORDERED that the order dated July 29, 1998, is reversed, on the law, without costs or disbursements, and the application to impose a sanction is denied.

The plaintiff failed to establish any ground for enjoining the defendants Joseph Guarneri and Joanne Guarneri from constructing a two-story, single-family home on the subject property (*see, Matter of Ficalora v Planning Bd.*, _____ AD2d _____ [decided herewith]).

However, we find that the imposition of a sanction was inappropriate under the circumstances of this case.

RITTER, J.P., ALTMAN, GOLDSTEIN, and MCGINITY, JJ., concur.

97-10463
98-07988

Robert A. Ficalora, etc., appellant, v
Joseph Guarneri, et al., respondents.

DECISION & ORDER ON MOTION

Motion by the Town of East Hampton respondents, *inter alia*, to dismiss an appeal from an order of the Supreme Court, Suffolk County, dated July 29, 1998, on the ground that the record on appeal does not comply with CPLR 5526 and 22 NYCRR 670.10. By decision and order on motion dated December 18, 1998, that branch of the motion was referred to the Justices hearing the appeal for determination upon the argument or submission of the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the motion is denied.

RITTER, J.P., ALTMAN, GOLDSTEIN, and MCGINITY, JJ., concur.

ENTER:

Martin H. Brownstein
Clerk