

Free Synagogue of Flushing et al., Appellants, v. Board of Estimate of the City of
New York et al., Respondents, et al., Defendants

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

28 N.Y.2d 515; 267 N.E.2d 881; 319 N.Y.S.2d 67; 1971 N.Y. LEXIS 1649

November 16, 1970, Submitted
January 6, 1971, Decided

PRIOR HISTORY: [***1] Reported below, *35 A D 2d 599*.

Motion for leave to appeal from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered July 27, 1970, which, insofar as appealed from, unanimously affirmed an order of the Supreme Court at Special Term (J. Irwin Shapiro, J.), entered in Queens County, which, in an action for a judgment declaring a certain zoning resolution invalid, granted partial summary judgment to the "City" defendants-respondents "dismissing all causes of action except that relating to 'spot zoning'" and "severed" the dismissed "causes of action". In opposition to the motion, defendants-respondents alleged that there was only one cause of action in the complaint, wherein various grounds for the invalidity of the zoning resolution were alleged; that Special Term had rejected all of said grounds except that of "spot zoning", and that there would be no final determination with respect to the single cause of action until the issue of "spot zoning" was resolved.

HEADNOTES

Appeal -- Court of Appeals -- nonfinal order -- in action for judgment declaring certain zoning resolution invalid, Special Term granted partial summary judgment "dismissing [*2] all causes of action except that relating to 'spot zoning'" and "severed" dismissed "causes of action" -- in opposition to motion for leave to appeal from order which affirmed order of Special Term, allegations that there was only one cause of action in complaint, wherein various grounds for invalidity of zoning resolution were alleged, that Special Term had rejected all of said grounds except that of "spot zoning", and that there would be no final determination with respect to single cause of action until issue of "spot zoning" was resolved -- motion for leave to appeal dismissed upon ground that order sought to be appealed from is not final.**

COUNSEL: *James J. Hagan* for motion.

J. Lee Rankin, Corporation Counsel (Alfred Weinstein and Eric J. Byrne of counsel) and Samuel Kirschenbaum opposed.

OPINION

[*516] [**882] Motion dismissed, with \$ 10 costs and necessary reproduction disbursements, upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution (see *Matter of Hillowitz, 20 N Y 2d 952, 954*).