

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

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**CA 18-00013**

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND TROUTMAN, JJ.

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IN THE MATTER OF SEALAND WASTE LLC,  
PETITIONER-PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

TOWN OF CARROLL, TOWN OF CARROLL ZONING BOARD OF  
APPEALS, AND ALAN GUSTAFSON, CODE ENFORCEMENT  
OFFICER OF TOWN OF CARROLL,  
RESPONDENTS-DEFENDANTS-RESPONDENTS.

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CAROL L. JONES, INDIVIDUALLY, AND AS EXECUTOR OF  
THE ESTATE OF DONALD J. JONES,  
DECEASED, AND JONES CARROLL, INC., NECESSARY OR  
INTERESTED PARTIES.

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KNAUF SHAW LLP, ROCHESTER (ALAN J. KNAUF OF COUNSEL), FOR  
PETITIONER-PLAINTIFF-APPELLANT.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (PAUL V. WEBB, JR., OF  
COUNSEL), FOR RESPONDENTS-DEFENDANTS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Chautauqua County  
(Frank A. Sedita, III, J.), entered April 6, 2017 in a proceeding  
pursuant to CPLR article 78 and a declaratory judgment action. The  
judgment denied and dismissed the petition-complaint of Sealand Waste  
LLC in its entirety.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: In this hybrid CPLR article 78 proceeding and  
declaratory judgment action, petitioner-plaintiff appeals from a  
judgment that, in effect, denied and dismissed its petition-complaint  
seeking, inter alia, a declaration that respondent-defendant Town of  
Carroll's Local Law No. 1 of 2007 (2007 Law) is null and void. We  
affirm. "[W]here, as here, 'there is a substantial identity of the  
parties, the two actions are sufficiently similar, and the relief  
sought is substantially the same, a court has broad discretion in  
determining whether an action should be dismissed pursuant to CPLR  
3211 (a) (4) on the ground that there is another action pending' "  
(*Matter of Goodyear v New York State Dept. of Health*, 163 AD3d 1427,  
1430 [4th Dept 2018]; see CPLR 7804 [f]). We conclude that Supreme  
Court did not abuse its discretion in dismissing the petition-  
complaint on that basis. Further, inasmuch as the 2007 Law has not

been declared invalid, the court properly concluded that respondents-defendants did not act in an arbitrary and capricious manner in denying petitioner-plaintiff's application for certain permits on the ground that such permits related to a proposed expansion of a landfill that is not allowed pursuant to the 2007 Law. In light of our determination, we do not address petitioner-plaintiff's remaining contentions.

Entered: February 8, 2019

Mark W. Bennett  
Clerk of the Court