

## EXHIBIT B

## **Daggett v. Putnam**

Supreme Court of New York, Appellate Division, Fourth Department

July 6, 1972

No Number in Original

### **Reporter**

334 N.Y.S.2d 556; 1972 N.Y. App. Div. LEXIS 4074; 40 A.D.2d 676

In the Matter of William R. Daggett, Appellant, v. Daniel A. Putnam et al., Constituting the Board of Zoning Appeals of the Town of Dunkirk, et al., Respondents

**Prior History:** [\*1] Appeal from judgment of Chautauqua Special Term dismissing petition to annul determination of Zoning Board.

### **Core Terms**

trailer, license, nonconforming use, trailer park, abandoned, ordinance, zoning ordinance, mobile home, one year, effective, installed

### **Case Summary**

#### **Procedural Posture**

Appellant petitioner, a property owner, challenged a judgment of the Chautauqua Special Term Court (New York), which dismissed his petition to annul a determination of appellee, the zoning board of the town where the petitioner lived. The board had directed the petitioner to remove one of the two trailers he had installed on his property.

#### **Overview**

The petitioner installed two trailers on his property before there was any ordinance restricting mobile homes or trailer parks. After an ordinance to license and regulate mobile homes and trailer parks became effective, the petitioner eventually received three licenses but never installed a third trailer. Another zoning ordinance subsequently placed the petitioner's property in an R1 Zone and prohibited the use of trailers for residence purposes in an R1 Zone, thus converting the petitioner's use into a nonconforming one. The ordinance further provided that a nonconforming use would terminate upon failure to exercise it for more than a year. After the petitioner removed one of the trailers for several years and then replaced it, he was directed by the board to remove it. The trial court found that he

had two nonconforming uses and had abandoned one of them by failure to use it for a period of over one year. The court reversed because abandonment required a complete discontinuance of use. Because the petitioner had one trailer on his property at all times, there was not a complete cessation of his nonconforming use, and his right to maintain two trailers had not been abandoned.

#### **Outcome**

The court reversed the trial court's dismissal of the property owner's petition to annul the zoning board's decision and granted the petition.

### **LexisNexis® Headnotes**

Business & Corporate Compliance > ... > Real Property Law > Zoning > Nonconforming Uses

**HN1** Abandonment of a nonconforming use of land does not result unless the discontinuance of use is complete.

**Judges:** Del Vecchio, J. P., Marsh, Garbrielli, Moule and Henry, JJ.

### **Opinion**

[\*557] Judgment unanimously reversed on the law, with costs, and judgment granted in accordance with the following Memorandum: Prior to October 20, 1958, petitioner constructed two concrete pads and installed two trailers on his property in the Town of Dunkirk. At that time there was no ordinance restricting mobile homes or trailer parks. On October 20, 1958, an ordinance to license and regulate mobile homes and trailer parks became effective. Petitioner applied for a trailer park license and, when it was refused, he instituted an article 78 proceeding to compel the issuance of one. That proceeding was settled in March, 1959 pursuant to a stipulation that provided that the town would issue two licenses for the trailers then on petitioner's property and would issue a third license for a

trailer to be placed on the property for the use of petitioner's family. In May, 1959 petitioner applied for and received three licenses but never installed the third trailer. para. A zoning ordinance, which became [\*\*2] effective in June, 1959, placed petitioner's property in an R1 Zone and provided that no trailer could be used for residence purposes in an R1 Zone. This ordinance converted plaintiff's use into a nonconforming one. ( Town of Somers v. Camarco, 308 N. Y. 537; People v. Miller, 304 N. Y. 105.) The zoning ordinance also provided that the failure to exercise a nonconforming use for a period of one year or more terminated the nonconforming use. Petitioner maintained two trailers on his property until 1964 when he removed one of them,

and from 1964 until 1970, maintained only one trailer on his property. In [\*\*558] 1970 he placed a second trailer on his property and was directed by respondent to remove it. para. Special Term found that petitioner had two nonconforming uses and abandoned one of them by failure to use it for a period of over one year. *HN1* Abandonment does not result unless the discontinuance of use is complete. ( Bam! Realty v. State of New York, 35 A D 2d 857; City of Binghamton v. Gartell, 275 App. Div. 457.) Since petitioner had one trailer on his property at all times, there was not a complete cessation of his nonconforming use and [\*\*3] his right to maintain two trailers has not been abandoned.

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