

Matter of Pistoia v Rounds

2020 NY Slip Op 30157(U)

January 24, 2020

Supreme Court, Broome County

Docket Number: EFCA2019003061

Judge: Eugene D. Faughnan

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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 3rd day of December, 2019.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

In the Matter of the Application Pursuant to Article 78 of the Civil Practice Law and Rule of the State of New York of

JOSEPH A. PISTOIA,

Petitioner,

DECISION AND ORDER

-vs-

Index No. EFCA2019003061

ELIZABETH ROUNDS, as Supervisor of the Town of Binghamton, MICHAEL DONAHUE, as Town Highway Superintendent for the Town of Binghamton, and TOWN OF BINGHAMTON,

Respondents,

APPEARANCES:

COUNSEL FOR PETITIONER : Maria Roumiantseva, Esq.
LEGAL SERVICES OF CENTRAL NEW YORK, INC.
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Binghamton, NY 13901

COUNSEL FOR RESPONDENT: Alan J. Pope, Esq.
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Binghamton, NY 13902

EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon an Verified Article 78 Petition filed on October 2, 2019 by Joseph A. Pistoia (“Petitioner”) who seeks an order compelling Elizabeth Rounds as Supervisor of the Town of Binghamton, *et al* (collectively “Respondents”) to provide him with a water meter for his private well, so that his sewer use may be properly measured and billed. Respondents oppose the Petition arguing that since Petitioner lives within a water district and is not connected to town water, he is not entitled to a meter and may be billed for sewer usage based upon an estimate.

Facts

The facts are not in serious dispute. Petitioner has resided on Everline Street, Town of Binghamton, Broome County since 2001. He has a private well and is not connected to the Town water supply but is connected to, and utilizes, the Town sewer. In order to receive payment for the use of the sewer, Respondents estimate his water usage and bills solely for the sewer usage. Petitioner has requested that his well use be measured by a water meter so that his actual sewer usage could be accurately measured¹.

Respondents have refused to install a meter arguing that Petitioner is located within a water district serviced by Town water and is required to connect to the service. Additionally, the Town acknowledges that residents who have access to Town sewers but no access to Town water are

¹Both parties acknowledge that Petitioner would be responsible for the cost of the meter and installation.

eligible to have meters installed to measure actual sewer usage. However residents, like Petitioner, who have access to Town water, are not eligible for installation of water meters.

Discussion

This case is one of statutory interpretation. “The main goal in statutory construction is to discern the will of the Legislature and, ‘[a]s the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof.’” *Matter of Lawrence Teachers' Ass'n v. New York State Pub. Relations Bd.*, 152 AD3d 171, 173 (3rd Dept. 2017); citing *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577 (1998); see *Matter of Level 3 Communications, LLC v. Clinton County*, 144 AD3d 115, 117-118, (3rd Dept. 2016). Additionally, “[a] rule of statutory construction provides that a general provision yields to a specific one.” *Ford v. New York State Racing and Wagering Bd.*, 107 AD3d 1071 (3rd Dept. 2013).

Under the Town of Binghamton Code (“TBC”), “[e]ach person whose property is supplied with water by the Town of Binghamton Consolidated Water District shall comply with the rules and regulations set forth in this article.” TBC §231-2 (B). Further, “[a]ll water service shall be metered, except as provided in § 231-7, and no more than one meter may be installed on any one service.” TBC §231-5 (A). Additionally, “[i]f any user does not have a meter, the Assistant Administrator of Special Districts may prescribe rates to be charged such user based on any reasonable formula; and the Assistant Administrator of Special Districts.” TBC 231-7 (D). “All Town residents within the Consolidated Water District are required to have a properly working water meter.” TBC 231-7 (E).

Petitioner seeks relief in the nature of mandamus to compel pursuant to CPLR §7803(1).

Mandamus to compel is “an extraordinary remedy that lies only to compel the performance of acts which are mandatory, not discretionary, and only when there is a clear legal right to the relief sought.” *Matter of Shaw v. King*, 123 AD3d 1317, 1318-1319 (3rd Dept. 2014) *quoting Melgrew v. Bd of Ed of the City School Dist of City of NY*, 88 AD3d 72, 75 (1st Dept. 2011).

The Respondents asserts that the Code requires residents of the water district to connect to the water service. However, the Code merely provides requirements where a resident wishes to connect to town water and the necessity of having a meter installed. Nowhere in the code does it indicate that if one resides within the water district, they must connect to Town water supply, and it does not appear that Respondents have insisted, or claimed, that Petitioner had to connect to the Town water supply prior to now. Moreover, the Code fails to provide any guidance regarding those within or without the district who have access to sewer service.

Respondent argues that any right to a meter is triggered by the connection to Town water. They assert that compliance TBC §231-2 (B) is a requirement for Petitioner to request a water meter. However, 231-2 provides that “[e]ach property owner whose property is supplied with water” by the water district shall comply with the various regulations. Petitioner’s property is not supplied water by the Town and has his own water supply. Moreover, Respondent conceded at oral argument that there are individuals outside of the water district and utilizing private wells that are connected to the Town sewer service. In those instances, residents may, at their own expense, request the installation of a meter to obtain accurate measurement of their actual sewer usage. The Court finds nothing in the Town Code which would prohibit Petitioner from requesting and receiving a meter merely because he resides in the water district but is not connected to Town water. There is no basis in the Town code to treat Petitioner differently from those residing outside of the water district who only utilize the Town sewer service.

Therefore, the Court concludes Petitioner has a clear right to obtain a meter at his own expense and the Respondent is required to install said meter and utilize the meter in determining sewer usage. The Petitioner's application for an order compelling the Respondents to install a water meter is **GRANTED**.

Petitioner is **ORDERED** to provide the Court with a Proposed Order and Judgment, on notice to the Respondent, within 10 days of this Decision and Order.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

ENTER:

Dated: January 24, 2020
Binghamton, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice