

**Desir v Simon**

2020 NY Slip Op 32345(U)

June 10, 2020

Supreme Court, Rockland County

Docket Number: 036809/2019

Judge: Thomas P. Zugibe

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This opinion is uncorrected and not selected for official publication.

To commence the statutory period for appeals as of right under CPLR § 5513(a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
ROCKLAND COUNTY

-----X  
DJINSAD DESIR, DAVID FRIED and JACQUELIN  
MILLIEN, in their capacities as Village Justices of the Village  
of Spring Valley, County of Rockland,

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Plaintiffs,  
-against-

DECISION & ORDER

ALAN M. SIMON, in his capacity as the Mayor of the  
Village of Spring Valley and THE BOARD OF TRUSTEES  
OF THE VILLAGE OF SPRING VALLEY,

Defendants.

-----X  
Zugibe, J.

Upon review of Defendants’ Motion for Summary Judgment and Plaintiffs’ Cross Motion for Summary Judgment (NYSCEF documents #34-47), the court denies Defendants’ Motion for Summary Judgment and grants Plaintiffs’ Cross Motion.

At the outset, Defendants argue that the Village Board Resolution authorizing the hiring of an additional clerk renders moot the issue whether the Chief Clerk can be replaced. The decision of Defendants to hire an additional clerk as an independent contractor moots neither the relief sought protecting the discharge of the Chief Clerk nor “the appointment of the clerk of the court of Spring Valley” as sought in the underlying Petition.

In addition, Defendants challenge the procedural standing of the Village Justices relying on *Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of Town of North Hempstead*, 69 N.Y.2d 406, 413 (1987). This case and its progeny stand for the proposition the “petitioning party must have a legally cognizable interest that is or will be affected” *Sun-Brite Car Wash, Inc.*,

*supra*; *Glengariff Health Care Ctr. v. New York State Dep't of Health*, 205 A.D.2d 626, 627 (2d Dep't 1994). Though it is traditional to have "in-fact injury", it is not a requirement. *Sun-Brite Car Wash, Inc*, 69 N.Y.2d 406, 413 (1987). Another relevant basis for standing is the zone of interest test, to wit, "[t]hat the injury asserted falls within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted" *Radow v. Bd. of Appeals of Town of Hempstead*, 120 A.D.3d 502, 502 (2d Dep't 2014). The injury associated with independent judicial administration related to interests promoted by the Town Law, which the Office of Court Administration acts under. Therefore, the Village Justices have standing.

The court now reaches the substantive issue of the interpretation of Village Law §3-301(2)(a). Where, as here, the issue is "pure legal interpretation of statutory terms", the court is not required to defer to the relevant agency and should "construe clear and unambiguous statutory language [so] as to give effect to the plain meaning of the words used" *Feinman v. Cty. of Nassau*, 154 A.D.3d 739, 741 (2d Dep't 2017). If the Justice Court Clerk works "solely" for the Village Justices, the discharge of the Clerk requires the "advice and consent" of the Village Justices. Here, Ms. Cheron clearly works solely for the Village Justices. Even assuming, *arguendo*, that the statute is not "clear and unambiguous" the same result would ensue. An ambiguous statute would require this Court to uphold the interpretation of the agency "responsible for its administration" with minor exceptions. *Better World Real Estate Grp. v. New York City Dep't of Fin.*, 122 A.D.3d 27, 35 (2d Dep't 2014).

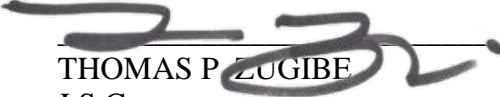
The parties further contest whether the Defendants are responsible for the legal fees of the Plaintiffs. The Second Department, in accordance with case law from the Court of Appeals, has held public officers may possess "implied authority to employ legal counsel in the good faith prosecution of an action" if "undertaken in the public interest and involving his official duties" *Moffatt v. Christ*, 74 A.D.2d 635 (2d Dep't 1980). Another potential requirement is the disqualification of the municipal attorney. *Id.* The action before this court is prosecuted by three individuals in their capacities as Village Justices, and the core issue of this action is whether the Executive has the ability to remove or hire the Village Court Clerk without the permission of the

Judiciary. While it is possible for ancillary private interests to be protected by this litigation, the legal issues directly concern matters of public interest and the separation of powers. Though seeking the same relief, Rockland Index: 036794/2019 features a party with legal rights of a different nature. In addition, the Village Justices' attempt to have the controversy clarified by the relevant administrative agency, the Office of Court Administration, was well documented. It is clear the Village Attorney would be conflicted from representing the Village Justices in an action against the Village Mayor. Therefore, the Board of Trustees for the Village of Spring Valley is responsible for reasonable counsel fees related to this action in an amount to be determined at an inquest.

Therefore, the Court grants a declaratory judgment declaring that Ms. Cheron cannot be discharged, nor can another clerk of the court be appointed, without the consent of the Village Justices, so long as Ms. Cheron continues to work solely for the Justices. The Court further grants an injunction directing the defendants to refrain from discharging Elsie Cheron as clerk of the court of the Village of Spring Valley, so long as Ms. Cheron continues to work solely for the Justices, or appointing someone else as the clerk of the court of the Village of Spring Valley without the consent of the village justices.

Dated: June 10, 2020  
New City, New York

ENTER

  
THOMAS P. ZUGIBE  
J.S.C.