

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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Elena Ruth Sassower, Director

By Fax: 518-694-3194 (12 pages)

March 31, 2014

TO: Albany County Supreme Court Justice Michael Lynch

FROM: Elena Ruth Sassower, *Plaintiff Pro Se*

RE: Reconsideration of the Court's from-the-bench decision on March 28, 2014 on Plaintiffs' Order to Show Cause for a Stay with TRO in the Citizen-Taxpayer Action: Center for Judicial Accountability, Inc. and Elena Sassower ... acting on their own behalf and on behalf of the People of the State of New York & the Public Interest v. Cuomo, et al., #1788-14

This to request the Court's reconsideration, by reargument, renewal, or by vacatur for fraud, of its March 28, 2014 from-the-bench decision denying plaintiffs' request for a TRO in the above-entitled citizen-taxpayer action brought under Article 7-A of the State Finance Law [§123 *et seq.*] to stay defendant New York State Senate and Assembly from voting on Budget Bill #S.6351/A.8551, to stay defendant Governor Cuomo from signing Budget Bill #S.6351/A.8551, and to stay defendant Comptroller DiNapoli from disbursing monies for Budget Bill #S.6351/A.8551.

As I recollect, the basis of the Court's decision at approximately 4:20 p.m. on Friday, March 28th, was the Attorney General's representation to the Court that CPLR §6313(a) precludes the granting of a TRO in an action "against a public officer...to restrain the performance of statutory duties."

As I further recollect, the Court did not correct or modify the Attorney General's representation of law, but, rather, turned to me for response.

My response was that this was a citizen-taxpayer action under Article 7-A of the State Finance Law – and that I believed such statutory remedy provided for the requested relief, as its very purpose was to prevent unlawful and unconstitutional disbursements of state taxpayer monies.

I further proposed that since it was late in the day on Friday – and nothing was going to happen on the weekend – that the Court reserve decision on the TRO until Monday morning, March 31st, so that it could more thoroughly review the matter.

* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

To this eminently sensible suggestion in a case of obvious magnitude, where the Court had not received the voluminous papers until after 3:30 p.m. and was already on the bench for oral argument approximately 20 minutes later – rushing the proceedings because the court closes at 4:30 p.m. – the Court declined, without reason.

Had the Court reserved decision – rather than uncritically adopting the Attorney General’s representation that CPLR §6313(a) was controlling – it would have had time to more carefully examine Article 7-A of the State Finance Law, with which it was, apparently, unfamiliar.

Certainly, I would have had the opportunity to again read State Finance Law Article 7-A, so as to have been able to point out to the Court the pertinent provision, §123(e)(2), entitled “Relief by the court”. It states:

“The court, at the commencement of an action pursuant to this article, or at any time subsequent thereto and prior to entry of judgment, upon application by the plaintiff or the attorney general on behalf of the people of the state, may grant a preliminary injunction and impose such terms and conditions as may be necessary to restrain the defendant if he or she threatens to commit or is committing an act or acts which, if committed or continued during the pendency of the action, would be detrimental to the public interest. A temporary restraining order may be granted pending a hearing for a preliminary injunction notwithstanding the requirements of section six thousand three hundred thirteen of the civil practice law and rules, where it appears that immediate and irreparable injury, loss, or damage will result unless the defendant is restrained before a hearing can be had.” (underlining added).

At oral argument, I identified “immediate and irreparable injury, loss or damage” in asserting that absent the TRO, the third phase of the judicial salary increase, encompassed by Budget Bill #S.6351/A.8551, would take effect April 1st and that argument would then predictably be made that it would be unconstitutional to remove this third phase of increase because of the non-diminution clause of the New York State Constitution that judicial compensation cannot be diminished (Article VI, §25).

Neither the Court nor the Attorney General denied that such argument would be made – or that it would be successful.

Since a constitutional bar to the removal of the third phase of the judicial salary increase, once it takes effect tomorrow, April 1st, meets the standard for immediate TRO relief pursuant to State Finance Law §123(e)(2), such needed to be addressed directly on March 28th – and now.

Of course, the Court has an obvious financial interest in the issue – and that too needed to be acknowledged by the Court, then and now.

I summarized the foregoing to your Law Clerk, Amy Joyce, to whom I spoke at approximately 9:35 this morning. Our conversation followed upon two voice mail messages I had left at the Attorney General's office some minutes earlier – and the e-mail request I had made on Saturday morning, March 29th, to the court reporter, Tracie Pamela Hilton, who had taken down the March 28th oral argument and this Court's decision.

Ms. Joyce requested that I put the foregoing in writing – which I have now done.

I have since spoken to the two Assistant Attorneys General who were at the March 28th oral argument – Assistant Attorney General Adrienne Kerwin, and her superior, Assistant Attorney General James McGowan. They did not deny or dispute the above recitation of facts as to what had occurred at the oral argument.

As I stated to Ms. Joyce, I request that the Court hold a phone conference today, giving myself and the Assistant Attorneys General an opportunity to be heard – and, if necessary, to have the court stenographer read back from her notes as to what Assistant Attorney General Kerwin represented to the Court, my response, and the basis upon which the Court denied the TRO.

Should the Court, on its own initiative, upon reviewing State Finance Law §123(e)(2), believe no further oral argument is required, I have no objection to the TRO being granted summarily.

Not a sole was in the Clerk's Office at approximately 4:30 p.m. on March 28th when I went to file with it the original Order to Show Cause and other paperwork, following the Court's proceedings.

I will mail these promptly. Meanwhile, I am faxing all that I received for filing following the oral argument. It is, additionally posted with plaintiffs' Verified Complaint and Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) on the Center for Judicial Accountability's website, www.judgewatch.org. Here's the direct link: <http://www.judgewatch.org/web-pages/searching-nys/budget-2014-2015/lawsuit-citizen-taxpayer%20action.htm>.

Thank you.

A handwritten signature in blue ink, appearing to read "James McGowan", with a long horizontal line extending to the right.

Enclosures

cc: Assistant Attorney General Adrienne Kerwin
adrienne.kerwin@ag.ny.gov
Assistant Attorney General James McGowan
james.mcgowan@ag.ny.gov

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Saturday, March 29, 2014 8:26 AM
To: 'thilton@courts.state.ny.us'; 'twelch6@nycap.rr.com'
Subject: Transcript of Yesterday's Oral Argument: CJA v. Cuomo-Citizen Taxpayer Action: # 1788-14

TO: Tracie Pamela Hilton
Senior Court Reporter

I would like to order the transcript of yesterday's oral argument before Justice Lynch of plaintiffs' order to show cause for a stay with TRO in the above case. Kindly advise as to the cost.

Thank you.

Elena Sassower, plaintiff *pro se*
914-455-4373