

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

COPY

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and as
Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

DECISION AND ORDER

Index No.: 1788-14

RJI No.: 01-14-113240

ANDREW M. CUOMO, in his official capacity as
Governor of the State of New York, DEAN SKELOS
in his official capacity as Temporary Senate President,
THE NEW YORK STATE SENATE, SHELDON
SILVER, in his official capacity as Assembly Speaker,
THE NEW YORK STATE ASSEMBLY, ERIC T.
SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, and THOMAS
DiNAPOLI, in his official capacity as Comptroller of
the State of New York

Defendants.

(Supreme Court, Albany County All Purpose Term)

Appearances:

Elena Ruth Sassower
Self-Represented Plaintiff
10 Stewart Place, Apartment 2D-E
White Plains, NY 10603

Eric T. Schneiderman
Attorney General
State of New York
Attorney for All Defendants
The Capitol
Albany, NY 12224
(Adrienne J. Kerwin, Esq., Assistant
Attorney General)

Roger D. McDonough, J.:

Previously, this Court dismissed three of plaintiffs' four causes of action set forth in their original verified complaint. The fourth cause of action survived defendants' motion to dismiss. Eventually, plaintiffs sought leave to supplement their verified complaint. The Court granted said leave. Defendants moved to dismiss the supplemental complaint in its entirety pursuant to CPLR § 3211(a)(7). Additionally, defendants moved for summary judgment as to plaintiffs' fourth cause of action. Plaintiffs opposed the motion and cross-moved for summary judgment and various other relief. During the pendency of the Court's consideration of said motions, plaintiffs brought an Order to Show Cause seeking various injunctive relief and leave to serve a second supplemental complaint. The Court heard oral argument upon the presentation of the Order to Show Cause and denied the temporary injunctive relief. Defendants oppose the remaining injunctive relief and ask the Court to deny plaintiffs' leave to serve a second supplemental complaint.¹

Background

Familiarity with the relevant background to this action against the Governor and legislative leaders is presumed.

Discussion

Motions with respect to the Supplemental Complaint

The Supplemental Complaint adds four causes of action (causes of action 5-8) to the original four set forth in the complaint. Defendants' motion to dismiss relies upon CPLR § 3211(a)(1), (a)(2) and (a)(7).

Defendants argue that this Court's rationale in dismissing the original causes of action 1-3 should apply equally to the new causes of action numbered 5, 6 and 7. Specifically, defendants maintain that plaintiffs are merely alleging identical claims on indistinguishable facts. Accordingly, relying on the "law of the case" doctrine, defendant assert that the fifth, sixth and seventh causes of action should be dismissed for the reasons cited by the Court in its prior

¹ Plaintiffs' requests for oral argument are denied pursuant to 22 NYCRR 202.8(d) (see, Niagara Venture v Niagara Falls Urban Renewal Agency, 56 AD3d 1150, 1150 [4th Dept. 2008]).

Decision and Order.

As to the eighth cause of action, defendants assert that plaintiffs are impermissibly challenging internal rules of the Legislature. Additionally, as to the fourth² and eighth causes of action, defendants argue that plaintiffs' claims of violations of Legislative Law § 32-A are directly disproved by documentary evidence. Specifically, defendants rely upon numerous public documents for the proposition that hearings were scheduled and held in connection with the 2014-15 and 2015-16 Legislative and Judiciary Budgets. Defendants also maintain that plaintiffs' challenges to the locations of the hearings, and the testimony allowed at said hearings, are non-justiciable. Specifically, defendants maintain that the actions/inactions at issue are protected from judicial review by the Speech or Debate Clause of the New York State Constitution.

In opposition/support³, plaintiffs primarily maintain that they have documentary evidence substantiating their claims of numerous violations of the Legislative Law, a Senate and Assembly Joint Rule and other Senate and Assembly Rules. Plaintiffs argue that these violations, as well as certain constitutional violations, were ignored in defendants' submissions. Additionally, plaintiffs maintain that both the Legislature's and the Judiciary's Proposed Budgets for Fiscal Year 2015-2016 are unconstitutional and unlawful. In particular, plaintiffs rely on the language of the transmittal letters accompanying the particular budgets. Further, plaintiffs cite the importance of the documentation handed up to the Legislature in February of 2013 in opposition to the Judiciary's budget and the second phase of judicial salary increases. Finally, plaintiffs stress that the Court's previous dismissal of the causes of action 1-3 was legally insupportable and factually baseless. In particular, plaintiffs argue that this Court is not bound by the "law of the case" doctrine and can revisit its earlier erroneous rulings.

² As issue has been joined and discovery conducted on the fourth cause of action, defendants maintain that summary judgment is the appropriate vehicle for dismissal as to said cause of action.

³ Plaintiffs also ask the Court to convert defendants' dismissal motion into a motion for summary judgment in plaintiffs' favor. Defendants did not take any position on this request. As plaintiffs have cross-moved for summary judgment relief, the Court denies any such conversion as unnecessary.

In reply/further support of their motion, defendants assert that they are unable to decipher any admissible, relevant evidence or reasoned argument “in plaintiffs’ defamatory, rambling submissions . . .” Additionally, defendants maintain that plaintiffs have failed to set forth any facts establishing how Article VII, section 7 or Article III, sections 10 and 16 were violated. Further, defendants maintain that there are no allegations in the supplemental complaint that any of the relevant parties listed in Section 31 of the Legislative Law were precluded from appearing before Legislative committees and/or refused to appear pursuant to any committee request. Finally, defendants maintain that the documentary evidence establishes compliance with Section 54-A of the Legislative Law.

In reply/further support of their cross-motion, plaintiffs cite an amendment to the Budget Bill which recognizes the unconstitutionality of the Budget Bill. Said amendment pertains to the replacement of the Commission on Judicial Compensation with the Commission on Legislative, Judicial and Executive Compensation. In light of the amendment, plaintiffs question why defendants’ motion for dismissal/summary judgment has not been withdrawn.

Fourth Cause of Action

The Court previously determined that plaintiffs’ had adequately stated a fourth cause of action as to defendants’ purported violation of Legislative Law § 32-a regarding public hearings for New York’s Budget. The Court specifically noted that defendants’ submissions did not include any documentary evidence establishing a defense to said cause of action. Defendants have now provide the Court with such documentary evidence. Accordingly, they seek summary judgment.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by providing sufficient evidence to eliminate any genuine material issues of fact from the case. The failure to make such a showing mandates denial of the motion, regardless of the sufficiency of the opposing papers (Alvarez v. Prospect Hosp., 68 NY2d 320 [1986]; Winegard v. New York Univ. Med. Center, 64 NY2d 851 [1985]).

Once such a showing is made, the burden shifts to the party opposing the motion for summary judgment to come forward with evidentiary proof, in admissible form, to establish the existence of material issues of fact which require a trial (Zuckerman v. City of New York, 49

NY2d 557, 562 [1980]). In order to defeat a motion for summary judgment, the opponent must present evidentiary facts sufficient to raise a triable issue. Averments merely stating conclusions are insufficient (Bethlehem Steel Corp. v. Solow, 51 NY2d 870 [1980]; Capelin Assoc. v. Globe Mfg. Corp., 34 NY2d 338 [1974]).

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Sternbach v. Cornell University, 162 AD2d 922, 923 [3rd Dept. 1990]). The focus is upon issue finding, not issue resolving, and all inferences and evidence must be viewed in a light most favorable to the party opposing the motion for summary judgment (*see*, B. S. Industrial Contractors, Inc. v. Town of Wells, 173 AD2d 1053 [3rd Dept. 1991]).

The Court finds that the relevant, documentary evidence fully demonstrates that defendants complied with Legislative Law § 32-a. In response to defendants' prima facie showing of entitlement to summary judgment, plaintiffs failed to raise any triable issues of fact. Accordingly, summary judgment dismissing the fourth cause of action is mandated.

Fifth Cause of Action

Plaintiffs allege that the Legislature's Proposed Budget for Fiscal Year 2015-2016 is unconstitutional and unlawful. The gist of this cause of action is that the Proposed Budget was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The Court again concludes that the itemization challenge must be dismissed as it is nonjusticiable (*see*, Urban Justice Ctr v Pataki, 38 AD3d 20, 30 [1st Dept. 2006]). As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement for certification (*see generally*, Matter of Schneider v Rockefeller, 31 NY2d 420, 434 [1972]). Accordingly, the fifth cause of action must be dismissed.

Sixth Cause of Action

Plaintiffs allege that the Judiciary's Proposed Budget for Fiscal Year 2015-2016 is unconstitutional and unlawful. The sixth cause of action principally alleges that the Senate and the Assembly are unable to comprehend the Judiciary's proposed budget for 2015-2016 because the cumulative dollar amount and percentage increase over the prior year's budget cannot be

discerned. The Court again finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly, the sixth cause of action must be dismissed. Regardless, this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable.

Seventh Cause of Action

Plaintiffs' seventh cause of action again alleges that certain reappropriations constitute revisions in violation of New York's Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the "reappropriations" at issue do not constitute executive revisions to the proposed Budget. Accordingly, the seventh cause of action must be dismissed.

Eighth Cause of Action

The eighth cause of action principally relates to defendants' purported violations of Legislative Law § 32-a regarding public hearings for New York's Budget. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this portion of the cause of action. To the extent other claims were raised in this cause of action, the Court concludes: (1) that plaintiffs have failed to set forth any facts in the supplemental complaint as to how Article VII, section 7 or Article III, sections 10 and 16 were violated; (2) that there are no allegations in the supplemental complaint that any of the relevant parties listed in Section 31 of the Legislative Law were precluded from appearing before Legislative committees and/or refused to appear pursuant to any committee request; and (3) that the documentary evidence establishes compliance with Section 54-A of the Legislative Law. Accordingly, dismissal of this cause of action is warranted pursuant to CPLR § 3211(a)(1) & (7).

Declaratory Relief

The Court notes that no issues of fact have been raised herein. Rather, the matters are purely questions of law and statutory interpretation. As such, in the context of a motion to dismiss, the Court may render a determination and declare the rights of the parties (Spilka v Town of Inlet, 8 AD3d 812, 813 [3rd Dept. 2004]). Now that this matter is fully concluded, the

Court will issue said declarations below in compliance with CPLR § 3001 (*see, Stonegate Family Holdings, Inc. v Revolutionary Trails*).

Remaining Requested Relief from Plaintiffs' Summary Judgment Motion

The Court notes that plaintiffs' papers are replete with wholly unsubstantiated accusations against the Assistant Attorney General sounding primarily in fraud upon the Court, deceit and making frivolous submissions. In conjunction with the accusations, plaintiffs seek sanctions, costs, penal law punishment, treble damages, referral to disciplinary authorities, disqualification of the Attorney General and an Order directing the Assistant Attorney General to provide certain disclosure.

The Court has reviewed the allegations and finds no basis to impose/award any of the requested relief. Moreover, the Court finds that plaintiffs' request for this Court to vacate its prior Order pursuant to CPLR § 5015 is wholly without merit.

Leave to Serve a Second Supplemental Complaint

The Court has considered the parties' respective arguments as to the issue of plaintiffs' request for leave to serve a second supplemental complaint. Plaintiffs' second supplemental complaint asserts eight new causes of action. The Court denies leave to serve a second supplemental complaint as to causes of action 9-12, based on the Court's dismissal of plaintiffs' original eight causes of action. Under these circumstances, the Court finds that causes of action 9-12 are "patently devoid of merit" (*Lucido v Mancuso*, 49 AD3d 220, 229 [2nd Dept. 2008]). As to causes of action 13-16, the Court finds that the allegations therein arise out of materially different facts and legal theories as opposed to the original four causes of action and the additional four causes of action set forth in the supplemental complaint. Accordingly, the Court finds that defendants have adequately established the prejudice that would flow from allowing a second supplemental complaint setting forth entirely new facts, theories and causes of action several years after service of the original complaint (*see generally, Brunetti v Musallam*, 59 AD3d 220, 223 [1st Dept. 2009]).

Finally, the Court finds no basis in the record, Judiciary Law, Administrative Code or any relevant statute or case law, for recusal. The Court again notes that the alleged financial conflict that plaintiffs describe is equally applicable to every Supreme and Acting Supreme Court Justice

in the State of New York, rendering recusal on the basis of financial interest a functional impossibility (*see*, Matter of Maron v Silver, 14 NY3d 230, 248-249 [2010]).

Plaintiffs' remaining arguments and requests for relief have been considered and found to be lacking in merit. In light of the Court's dismissal of the supplemental complaint and denial for leave to serve a second supplemental complaint, the Court also concludes that injunctive relief is unwarranted here.

Based upon the foregoing, it is hereby

ORDERED that the supplemental complaint is hereby dismissed in its entirety pursuant to CPLR §§ 3211 and 3212; and it is further

ORDERED that defendants' cross-motion for summary judgment is hereby denied in its entirety; and it is further

ORDERED that defendants' remaining requests for relief, as set forth in their cross-motion, are hereby denied in their entirety; and it is further

ORDERED that plaintiffs' request for injunctive relief is hereby denied in its entirety; and it is further

ORDERED that plaintiffs' motion for leave to serve a second, supplemental complaint is hereby denied in its entirety; and it is further

ORDERED that, as an alternative basis for dismissal, the supplemental complaint must be dismissed as to plaintiff Center for Judicial Accountability, Inc., based upon CPLR § 321(a) and the relevant caselaw (*see*, Cinderella Holding Corp. v Calvert Ins. Co., 265 AD2d 444, 444

[2nd Dept. 1999)]; and it is further

DECLARED that the Legislature's proposed budget for fiscal year 2014-2015 embodied in Budget Bill # S.6351/A.8551 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that the Judiciary's proposed budget for fiscal year 2014-2015 embodied in Budget Bill # S.6351/A.8551 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that Budget Bill # S.6351/A.8551 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that the Legislature's proposed budget for fiscal year 2015-2016 embodied in Budget Bill # S.2001/A.3001 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that the Judiciary's proposed budget for fiscal year 2015-2016 embodied in Budget Bill # S.2001/A.3001 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that Budget Bill # S.2001/A.3001 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional.

This shall constitute the Decision and Order of the Court. The original decision and order is being returned to the counsel for defendants who is directed to enter this Decision and Order without notice and to serve plaintiffs with a copy of this Decision and Order with notice of entry. The Court will transmit a copy of the Decision and Order and the papers considered to the Albany County Clerk. The signing of the decision and order and delivery of a copy of the

decision and order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER.

Dated: Albany, New York
July 14, 2016



Roger D. McDonough
Supreme Court Justice

Papers Considered⁴:

- 1) Defendants' Notice of Motion, dated July 28, 2015;
- 2) Affirmation of Adrienne J. Kerwin, Esq., A.A.G., received by the Court on July 29, 2015⁵, with annexed exhibits;
- 3) Plaintiffs' Notice of Cross-Motion, dated September 22, 2015;
- 4) Affidavit in Opposition/Support of Plaintiff Sassower, sworn to September 22, 2015, with annexed exhibits;
- 5) Affirmation of Adrienne J. Kerwin, Esq., A.A.G., dated October 23, 2015, with annexed exhibits;
- 6) Affidavit in Reply & Further Support of Plaintiff Sassower, sworn to November 5, 2015, with annexed exhibits;
- 7) Order to Show Cause executed by this Court on March 23, 2016;
- 8) Affidavit of Plaintiff Sassower, sworn to March 23, 2016, with annexed exhibits;
- 9) Plaintiffs' Verified Second Supplemental Complaint, with annexed exhibits and corrections;
- 10) Affirmation of Adrienne J. Kerwin, Esq., A.A.G., dated April 8, 2016, with annexed exhibits;
- 11) Affidavit in Reply & Further Support of Plaintiff Sassower, sworn to April 22, 2016, with annexed exhibits;

⁴ The parties also submitted several memoranda of law in support of their respective positions. Pursuant to relevant caselaw, it is the Court's policy not to list memoranda of law in the papers considered (*see, Lyndaker v Board of Education of West Canada Valley Central School District*, 129 AD3d 1561 [4th Dept. 2015]).

⁵ The affirmation was incorrectly dated July 28, 2014 by virtue of a scrivener's error. The letter accompanying the affirmation was dated July 28, 2015.

- 12) Plaintiffs' 2011 Exhibits regarding the Commission of Judicial Compensation;
- 13) Plaintiffs' 2002 Exhibits regarding motions before the Court of Appeals in a prior proceeding against the Commission on Judicial Conduct of the State of New York;
- 14) Plaintiffs' Exhibits pertaining to their action (Index # 302951-12) heard in Supreme Court, Bronx County;
- 15) Plaintiffs' 2015 Exhibits to Commission on Legislative, Judicial & Executive Compensation.

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