New York Supreme Court

Appellate Division—Second Department

App. Div. No. 2011-02821

EMILY PINES, DAVID DEMAREST, JEFFREY D. LEBOWITZ, STEPHEN FERRADINO, RALPH A. BONIELLO, III and JOSEPH C. CALABRESE,

Plaintiffs-Respondents,

-against-

THE STATE OF NEW YORK,

Defendant-Appellant.

BRIEF OF PROPOSED AMICI CURIAE: THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK, INC. AND THE NEW YORK STATE ASSOCIATION OF CITY COURT JUDGES

STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, New York 10038
(212) 806-5400

Counsel for *Amici Curiae*

Of Counsel:

Joseph L. Forstadt
Alan M. Klinger
Ernst H. Rosenberger
Burton N. Lipshie
Jerry H. Goldfeder
Linda M. Melendres

Nassau County Index No. 10-13518

PRELIMINARY STATEMENT

The Association of Justices of the Supreme Court of the State of New York, the Supreme Court Justices Association of the City of New York, Inc. and the New York State Association of City Court Judges (collectively, the "Proposed *Amici*") appear specially as *amici curiae* in support of the Plaintiffs in Pines, et al. v. State of New York on appeal from the Supreme Court Nassau County (collectively, "Respondents").

For the reasons more fully addressed by the Respondents in their brief to this Court, and for the additional reasons presented herein, we urge the Court to affirm the Supreme Court's well reasoned decision, by interpreting the plain and unambiguous meaning of the statutory text of Laws of 2009, Chapter 51, 3 ("Chapter 51"), to provide for the self-executing increase in compensation for the New York State Judges and Justices, effective for the budget year of 2009.

The State of New York ("the Appellant") urges the Court to look past the clear language of the statute and give more priority to a single exchange on the floor of the Senate and a single comment by Assemblyman Farrell, than the actual words enacted by the Legislature and as signed into law by the Governor. This Court should exercise its authority to end Appellant's flagrant disregard of its statutory duty to provide the funds that were appropriated to increase judicial compensation pursuant to Chapter 51.

language to give effect to its plain meaning"). Therefore, clarity and the lack of ambiguity of statutory language makes it inappropriate for the courts to delve into legislative history because

> when the Legislature enacted the statutes and when the Governor signed them into law, they stood for what their words manifested and not the inner thoughts of a draftsman or adviser. After all, it was the words, not the thoughts which were to 'influence the conduct of others.'

People v. Graham, 55 N.Y.2d 144, 151 (1982) (internal citations omitted). The Court of Appeals in *Graham*, also noted that, although "a legal act originates in intention, it is perfected by expression." *Id.* at 151 (internal citations omitted). The role of Judges is to interpret the language of the statute itself, "rather than reconstruct legislators' intentions. Where the language of those laws is clear, [the court is] not free to replace it with an unenacted legislative intent." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 452-453 (1987) (Scalia, J., concurring).

Here, Appellant is urging this Court to reverse the lower court's decision by looking past the clear language of the statute and giving more credence to a single exchange on the floor of the Senate and a single comment by Assemblyman Farrell, than the actual words enacted by the Legislature and as signed into law by the Governor. The Court should not be tempted to trespass into the Legislature's domain by circumventing the principles of interpretation of the legislative process.

well-settled rule of statutory construction that "a construction rendering statutory language superfluous is to be avoided") (citing *Matter of Branford House v. Michetti*, 81 N.Y.2d 681, 688 (1993).[3]

This Court should affirm the interpretation of the Supreme Court because, not only is the statutory text clear and unambiguous, it is the only interpretation that does not eliminate the remedy by the Legislature for the Judges when Chapter 51 was enacted. Affirming the Supreme Court's decision will insure there is not an unjust and absurd result and the statute will not be rendered meaningless.

POINT II

WHERE LEGISLATIVE HISTORY IS UNAVAILING OR CONTRARY TO A STATUTE'S CLEAR MEANING, STATUTORY TEXT PREVAILS

Appellant points to two floor debates and post enactment statements as support for its interpretation of Chapter 51 that the statute does not provide for a self-executing adjustment in compensation for the Judges and Justices. *See* App. Br. 12-14, 30. The lower court found that the legislative history demonstrated by the debate on the chamber floor was not persuasive because the transcripts merely represented "debate about the issue." *See* Exhibit A at 6. Moreover, if legislative

[3] *See* Point III discussion of the Salary Commission.

such as declarations during floor debates should be cautiously used. *See Majewski*, 91 N.Y.2d at 586.

Appellant's use of post enactment statements is also unpersuasive. *See Majewski*, 91 N.Y.2d at 586-587 (little weight should be accorded to the postpassage opinions because such statements suffer from the same infirmities as those made during floor debates by legislators). We recognize that the funds were not dispersed, which is the reason for this case, however that fact is irrelevant to the plain language of the statute and is unavailing to the determination of the legislative intent.

Not only is legislative history unnecessary in this instance to determine the clear intent of Chapter 51, the legislative history that Appellant points to for support are incompetent aids to the Court in determining the meaning the of Chapter 51. As such, the lower court was unquestionably justified in its determination that the floor debates were unavailing.

POINT III

STATUTES SHOULD BE INTERPRETED AS A WHOLE TO SERVE THE OVER-ALL LEGISLATIVE GOAL

The Appellant attempts to further support its position by looking to legislation enacted after the statute at issue to determine that Chapter 51 was not self-executing. Specifically, Appellants point to Chapter 567 of the Laws of 2010 ("Chapter 567") that created a quadrennial commission, named the Special Commission on Judicial Compensation, "to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system." L. 2010, ch. 567, § 1(a). This Commission issued its final report in August 2011, recommending that the New York State Judges and Justices receive a salary increase, effective April 1, 2012, as long as the Legislature or Governor does not modify or veto the recommendation. The Appellant argues that if Chapter 51 was self-executing, there would have been no need to establish the Compensation Commission. App. Br. 34.

The Appellant, however, again looks past the plain text of Chapter 567, which merely creates a commission to evaluate and make recommendations as to judicial compensation. This statute is clearly not at odds with the lower court's decision, nor does it provide any support that Chapter 51 is not self-executing.