

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 17 NASSAU COUNTY**

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

_____ x

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

Index No. 13518/10

Motion Submitted: 11/23/10

Motion Sequence: 001, 002

Plaintiff(s),

-against-

STATE OF NEW YORK,

Defendant(s).

_____ x

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....XX
- Answering Papers.....X
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

In this declaratory judgment action brought by plaintiffs regarding the issue of judicial compensation, defendant, the State of New York ("the State"), moves pursuant to CPLR §3211(a)(7) for dismissal of the complaint for failure to state a cause of action. Plaintiffs cross-move pursuant to CPLR §3212 for summary judgment.

In its initial motion to dismiss, defendant contends that this matter turns on whether plaintiffs' interpretation of the New York State Budget language is correct. Defendant maintains in its motion to dismiss that plaintiffs' interpretation is incorrect, submitting to the Court copies of the proposed and amended budgetary legislation, and the pleadings in this action. In its opposition to plaintiffs' cross-motion for summary judgment, defendant submits matters outside the pleadings for this Court's consideration, namely the transcripts of New York State Assembly and Senate floor debate concerning the judiciary budget.

In view of the importance of this action, and its potential statewide impact, this Court has determined that the provident course of action is to place the parties on formal notice that defendant's motion to dismiss pursuant to CPLR § 3211 shall be treated as a motion for summary judgment (*CPLR § 3211[c]; Mihlovan v. Grozavu*, 72 N.Y.2d 506, 531 N.E.2d 288, 534 N.Y.S.2d 656 [1988]).

The instant motion is adjourned to February 4, 2011, at which time it will be marked fully submitted. The parties shall submit any additional proof, in admissible form, to support their respective positions regarding the instant summary judgment motion on or before the adjourn date.

The foregoing constitutes the Order of this Court.

Dated: January 14, 2011
Mineola, N.Y.


J. S. C.

ENTERED
JAN 21 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE