

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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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-

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.

-----x
STATE OF NEW YORK)
ALBANY COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff in this citizen-taxpayer action brought under State Finance Law Article 7-A [§123 *et seq.*] for declaratory judgment. I am fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of the relief requested by plaintiffs' order to show cause.

2. With respect to the first branch of relief, granting leave to plaintiffs to file their accompanying March 23, 2016 verified second supplemental complaint, CPLR §3025(b) states:

“Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.”

3. As demonstrated by plaintiffs’ verified second supplemental complaint, defendants’ constitutional, statutory, and rule violations with respect to the Legislative and Judiciary budget for fiscal year 2016-2017 and the Governor’s Legislative/Judiciary budget bill are identical to their violations with respect to the Legislative and Judiciary budgets for fiscal years 2014-2015 and 2015-2016 and the Governor’s Legislative/Judiciary budget bills for those years. Likewise, “the force of law” judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation suffer from the identical constitutional and statutory violations as “the force of law” judicial salary increases recommended by the Commission on Judicial Compensation.

4. It would be wasteful to bring a separate citizen taxpayer action when the facts and law are identical – and when any such separate citizen taxpayer action would doubtless be assigned to the Court as a related proceeding.

5. Assistant Attorney General Adrienne Kerwin did not deny this when, on March 11, 2016, she refused to consent to my request for a stipulation pursuant to CPLR §3025(b) so as to obviate my having to proceed by motion (Exhibit A).

6. Last year, when AAG Kerwin also refused to stipulate to plaintiffs’ filing of their supplemental complaint, this Court stated as follows in its June 24, 2015 decision granting plaintiffs’ motion for leave:

“The Court finds that plaintiffs are entitled to supplement their verified complaint. Defendants have not made an adequate showing that the new causes of action are ‘palpably insufficient’ or ‘patently devoid of merit’

(Lucido v. Mancuso, 49 AD3d 220, 229 [2nd Dept. 2008]). The Court’s finding does not, of course, insulate the causes of action from a subsequent challenge to their merits via a CPLR §§3211 and/or 3212 motion.” (Exhibit B).

7. I read this paragraph to Ms. Kerwin on March 11th, stating that the Court’s reasoning is even more applicable now, as she had no basis for the CPLR §§3211/3212 motion she thereafter made, the fraudulence of which plaintiffs demonstrated by their cross-motion for summary judgment in their favor, which is *sub judice* before the Court.

8. That the state of the record before the Court is one of summary judgment for plaintiffs also underscores their entitlement to the injunctive and TRO relief sought by the second and third branches of the order to show cause pertaining to Legislative/Judiciary Budget Bill #S.6401/A.9001 and “the force of law” judicial salary increase recommendations of the Commission on Legislative, Judicial and Executive Compensation.

9. As for the fourth branch, enjoining defendants Senate and Assembly’s General Budget Conference Committee and its subcommittees, here, too, plaintiffs have a clear “likelihood of success on the merits” unless AAG Kerwin is able explain how eight budget bills could be amended on dates when the Assembly and Senate were not in session – and furnish evidentiary particulars as to those amendments.

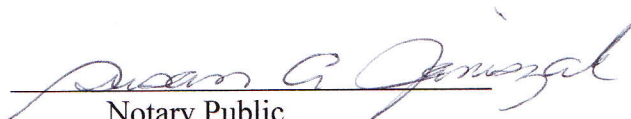
10. Finally, as for the fifth branch, enjoining defendants Cuomo, Temporary Senate President Flanagan, and Assembly Speaker Heastie from their behind-closed-doors, three-men-in-a-room budget deal-making , the Court of Appeals decision in *King v. Cuomo*, 81 NY 2d 247 (1993), is dispositive of its unconstitutionality – and, as reflected by my March 11th e-mail to AAG Kerwin (Exhibit A) – she has had more than ample time to prepare a refutation, if such can be found.

11. In the interest of economy, I refer the Court to plaintiffs’ 90-page verified second supplemental complaint for the facts and law entitling them to the relief sought.

12. No other application has been made for the same or similar relief, except as hereinabove stated with respect to plaintiffs' CPLR §3025(b) motion that the Court granted last year. As for the injunctive relief, plaintiffs sought to enjoin enactment of the Legislative/Judiciary budget bill for fiscal year 2014-2015 and the judicial salary increases, upon commencement of this citizen taxpayer action on March 28, 2014, which was denied.


ELENA RUTH SASSOWER

Sworn to before me this
23rd day of March 2016


Notary Public

Susan A. Janiszak
Notary Public-State of New York
04JA6209391
Qualified in Albany County
Commission expires 07/27/20 17

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Friday, March 11, 2016 5:07 PM
To: adrienne.kerwin@ag.ny.gov
Subject: Citizen Taxpayer Action - CJA v Cuomo #1788-2014: Mon. March 21st: OSC, with stay & TRO

Dear Ms. Kerwin,

Following up our phone conversation about an hour ago, I again reiterate that it is the Attorney General's duty to intervene, on behalf of the People of the State of New York, in this citizen-taxpayer action, and pursuant to Executive Law §63.1 – based on the state of the record – about which I testified, accurately, before the Commission on Legislative, Judicial and Executive Compensation at its November 30, 2015 public hearing. Since you stated you were aware of my testimony, but not its specifics, here's the direct link to the webpage of CJA's website, from which you can read my written statement and/or watch the video of my reading it before the Commission: <http://www.judgewatch.org/web-pages/judicial-compensation/2015/testimony.htm>.

If you have a legitimate basis for refusing to agree to my request for your consent, pursuant to CPLR §3025(b), to plaintiffs' verified second supplemental complaint, addressed to fiscal year 2016-2017, where the facts and law are IDENTICAL to those set forth by the verified complaint and verified supplemental complaint, addressed to fiscal years 2014-2015 and 2015-2016, please furnish it to me. Obviously, plaintiffs could bring a whole new citizen taxpayer action, but such would be wasteful. Indeed, as you yourself conceded last year, it would doubtless be referred to Judge McDonough as related to the pending citizen-taxpayer action.

As discussed, last year's behind-closed-doors, three-men-in-a-room budget dealmaking resulted in the repeal of Chapter 567 of the Laws of 2010 which created the Commission on Judicial Compensation – and, in its place, the creation of the Commission on Legislative, Judicial and Executive Compensation, born of a materially-identical statute, *as written*. This has been detailed by plaintiffs' September 22, 2015 cross-motion for summary judgment and other relief and November 5, 2015 reply papers, *sub judice* before Judge McDonough.

Since then, the Commission on Legislative, Judicial and Executive Compensation has replicated ALL the constitutional and statutory violations – and fraud – of the Commission on Judicial Compensation. Likewise, ALL the constitutional and statutory violations and fraud of the Judiciary and Legislative budgets and of the Legislative/Judiciary budget bills for the past two fiscal years have been – and are being -- repeated for the upcoming fiscal year.

So that you can review, ALL the documentary proof, upon which the verified second supplemental complaint will be based – in advance of my furnishing the verified second supplemental complaint to you on or about next Wednesday, March 15th

-- here's the link to CJA's webpage: "NO PAY RAISES FOR NEW YORK'S CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!", from which it is ALL accessible: <http://www.judgewatch.org/web-pages/judicial-compensation/2015-no-pay-raises-menu.htm>.

As further discussed, consistent with the last paragraph of the verified complaint (§126) and the last paragraph of the verified supplemental complaint (§1236), the second supplemental complaint will also seek a declaration as to the unconstitutionality of the behind-closed-doors three-men-in-a-room budget dealmaking. As it has NO basis in the New York State Constitution, in statute, or legislative rule – and eviscerates the constitutionally-ordained budget design of Article VII, §§1-4 and Article IV, §7 – it must be declared unconstitutional. And making this obvious is the case of *King v. Cuomo*, 81 N.Y.2d 247 (1993), with which you stated you were familiar. Indeed, the parallels between the bicameral recall practice declared unconstitutional in *King v. Cuomo* and a challenge to three-men-in-a-room budget dealmaking

are clear. Only minor alterations in the text of the decision in *King v. Cuomo* are needed to support the declaration plaintiffs will seek.

So that the public is not further injured, please reconsider your peremptory refusal to give your consent, pursuant to CPLR §3025(b). If not, please furnish me with the name of your superior, with whom, additionally I wish to directly discuss my long-standing and repeated requests for the Attorney General's intervention -- including *via* outside counsel.

Certainly, the magnitude of the issues – and public monies – involved warrant that Attorney General Schneiderman himself appear before Judge McDonough in connection with plaintiffs' OSC, with stay & TRO, scheduled for Monday, March 21st at 11:15 a.m. Please furnish this to the Attorney General and his highest deputies as my request.

Thank you.

Elena Sassower, plaintiff *pro se*

& on behalf of the People of the State of New York & the Public Interest

914-421-1200

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

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,

Albany County Clerk
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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
Post Office Box 8101
White Plains, NY 10602

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)

EX B

Roger D. McDonough, J.:

Plaintiffs seek an Order: (1) granting leave to supplement their verified complaint with a proposed verified supplemental complaint; and (2) disqualifying this Court and vacating the Court's October 9, 2014 Decision and Order. Defendants oppose the relief in its entirety.

The Court finds that plaintiffs are entitled to supplement their verified complaint. Defendants have not made an adequate showing that the new causes of action are "palpably insufficient" or "patently devoid of merit" (Lucido v Mancuso, 49 AD3d 220, 229 [2nd Dept. 2008]). The Court's finding does not, of course, insulate the causes of action from a subsequent challenge to their merits via a CPLR §§ 3211 and/or 3212 motion.

Additionally, the Court finds no basis in the record, Judiciary Law, Administrative Code or any relevant statute or case law for recusal. Similarly, no rational basis exists for this Court to vacate its prior Decision and Order. 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 requests for relief have been considered and found to be lacking in merit.

Based upon the foregoing, it is hereby

ORDERED that plaintiffs' motion for leave to supplement their complaint is hereby granted; and it is further

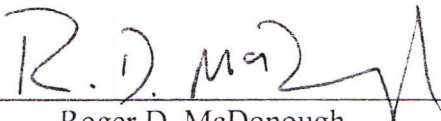
ORDERED that plaintiffs' remaining motion requests for relief, including their motion for this Court's recusal, are hereby denied in their entirety; and it is further

ORDERED that defendants are directed to answer or otherwise move with respect to the verified supplemental complaint within thirty-five (35) days of the date of this Order.

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
June 24, 2015



Roger D. McDonough
Supreme Court Justice

Papers Considered:

Plaintiffs' Notice of Motion, dated March 31, 2015;
Affidavit of Plaintiff Sassower, sworn to March 31, 2015, with annexed exhibits;
Plaintiffs' Proposed Verified Supplemental Complaint;
Affirmation of Adrienne J. Kerwin, Esq., dated April 9, 2015, with annexed exhibits;
Reply Affidavit of Plaintiff Sassower, received by the Court on April 17 2015¹, with annexed exhibits.

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¹ The reply affidavit was erroneously dated as March 15, 2015. This date predates the Notice of Motion as well as the opposition papers the reply affidavit was presumably served in reply to.

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Plaintiffs,

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-against-

Justice McDonough

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Defendants.

-----X

**PLAINTIFFS' ORDER TO SHOW CAUSE
WITH STAY & TRO
AND SUPPORTING AFFIDAVIT**

ELENA RUTH SASSOWER, Plaintiff *Pro Se*, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York &
the Public Interest

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