

Order 2/9/11

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 15 NASSAU COUNTY**

PRESENT:

**Honorable Karen V. Murphy
Justice of the Supreme Court**

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

Plaintiff(s),

-against-

STATE OF NEW YORK,

Defendant(s).

_____ x

Index No. 13518/10

Motion Submitted: 2/4/11
Motion Sequence: 001, 002

The following papers read on this motion:

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

Defendant moves this Court for an Order dismissing the complaint for failure to state a cause of action, pursuant to CPLR §3211(a)(7). Plaintiffs cross-move pursuant to CPLR §3212 for summary judgment. By written decision dated January 14, 2011, on notice to the parties, the Court converted defendant's motion to one for summary judgment pursuant to CPLR §3211(c). Neither party proffered any additional evidence subsequent to that notification.

The compensation of judges and justices of the Unified Court System of the State of New York is at issue in this action. Plaintiffs seek a declaratory judgment that the salary of the judges and justices has been increased under Laws of 2009, Chapter 51, §3 ("Chapter

The *Pataki* Court noted that appropriation bills are limited to two years (Constitution, Article VII, Section 7), and held that it is not forbidden for an appropriation bill to supersede existing law for that time (*Pataki*, 4 N.Y.3d at 98). Therefore, and at the very least, Chapter 51 may properly be determined to supersede the 1998 adjustments to the Judiciary Law for that time period from April 2009 to April 2011.

While this Court is not persuaded that the Judiciary Law must be amended to effectuate a salary adjustment, assuming *arguendo* that this Court found Chapter 51 to be in conflict with Judiciary Law Article 7-B, statutory construction mandates that the later enactment, to wit: Chapter 51 must prevail, as it is the more recent expression of the legislature's will (*see*, McKinney's Statutes § 398; *Matter of Harmon*, 181 Misc.2d 924, 696 N.Y.S.2d 390 (Surr. Ct., New York Co., 8/23/99); *see also*, *Abate v. Mundt*, 25 N.Y.2d 309, 253 N.E.2d 189, 305 N.Y.S.2d 465 [1969]). Furthermore, "it is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the legislature", (*citations omitted*, *State of New York v. Patricia II*, 6 N.Y. 3d 160, 289, 844 N.E.2d 743, 811 N.Y.S.2d 289 [2006]).

Defendant suggests that the legislative intent is demonstrated by the debate on the chamber floor. The Court finds unavailing defendant's submission of Assembly and Senate floor debate transcripts for the very reason that those transcripts represent just that, which is debate about the issue. While illustrative of the animus and disdain of less than a handful of legislators for the judiciary, a co-equal branch of government, the colloquy is unpersuasive. Ultimately, the Legislature saw fit to pass the appropriation for judicial salary increases, and it was keenly aware of the earlier *Maron* decision emanating from the Appellate Division (*Maron v. Silver*, 58 A.D.3d 102, 871 N.Y.S.2d 404 [3d Dept. 2008]), which stressed the importance of the budgetary language requiring that judicial salary increases be paid "pursuant to a chapter of the laws of 2006" (*Id.* at 420). In that decision, the Appellate Division determined that the phrase, "pursuant to a chapter of the laws of 2006" clearly meant that the judicial budget was not self-executing (*Id.* at 421). Thus, to ignore the Legislature's present and intentional deletion of such limiting language in Chapter 51 would be to ignore the plain meaning of that Chapter, which is that the judicial budget is self-executing.

Surely, defendant is not suggesting that this Court give credence to the argument that Chapter 51 is merely the Legislature's transparent attempt to, once again, mollify the judiciary by acknowledging the obvious need for salary increases, while, with the other hand, attempting to withhold those earned and deserved increases. While "all the legislators and the Legislature itself are entitled to the presumption that they act only in accordance with and fulfillment of their oaths of office" (*Cohen v. State of New York*, 94 N.Y.2d 1, 13, 720 N.E.2d 850, 698 N.Y.S.2d 574 [1999]), the history of the Legislature's assault on the judiciary, as outlined in *Maron* (14 N.Y.3d at 245), lends credence to the inference that the