

STATE OF NEW YORK
SUPREME COURT
CORNELL UNIVERSITY,

COUNTY OF TOMPKINS

Petitioner/Plaintiff,

vs.

Index No. 2009-0220

NEW YORK STATE DEPARTMENT OF STATE,
RONALD E. PIESTER, in his capacity as New York
State Department of State Director of Division of Code
Enforcement and Administrative and Special Deputy
Secretary to State, NEW YORK STATE
DEPARTMENT OF STATE CAPITAL REGION-
SYRACUSE BOARD OF REVIEW; RICHARD T.
LAFFERTY, in his capacity as Acting Chairman,
New York State Department of State Capital
Region-Syracuse Board of Review; CITY OF ITHACA;
C. THOMAS PARSONS, in his capacity as Deputy Fire
and Fire Marshall, City of Ithaca Fire Department,

RECEIVED/FILED
TOMPKINS COUNTY CLERK
2009 AUG -6 PM 3:45

Respondents/Defendants.

BEFORE: HON. ROBERT C. MULVEY
Supreme Court Justice

APPEARANCES:

Norma W. Schwab, Esq.
Office of the University Counsel
Attorneys for Plaintiff/Petitioner
300 CCC Building, Garden Avenue
Ithaca, NY 14853

Mary A. Walsh, Esq.
Assistant Attorney General
Attorney for Respondent New York State Department of State
44 Hawley Street, 17th Floor
Binghamton, NY 13901

Daniel Hoffman, Esq.
Ithaca City Attorney
Attorney for Defendants/Respondents City of Ithaca and C.
Thomas Parsons
108 East Green Street
Ithaca, NY 14850

DECISION & ORDER

Mulvey, Robert C., J.

The question presented in this Article 78 proceeding/declaratory judgment action is whether the Secretary of State's interpretation of a provision of the New York State Uniform Fire Prevention and Building Code Act is lawful.

Cornell seeks a declaratory judgment pursuant to Section 3001 of the Civil Practice Law and Rules declaring that such interpretation is invalid and/or a judgment pursuant to Article 78 annulling and vacating notices of violation.

The parties agree that the issue may be determined by the Court summarily since there is no factual dispute presented.

BACKGROUND

Two buildings on the Cornell University campus built in the 1930's contain lecture halls that have only one exit doorway. These halls have been posted and used for a maximum of 85 people.

The current New York State Uniform Fire Prevention and Building Code (adopted in 1981) requires at least two exits or exit access doorways where the maximum occupant

load exceeds 50.

Cornell contends that these lecture halls may still be used for more than 50 people because the buildings were “grandfathered” by the statute authorizing the promulgation of the Uniform Code. The State has rejected Cornell’s interpretation of the Code and argues that the grandfather clause does not apply to provisions regarding the “safety, health and welfare of the occupants.”

The matter comes to the Court by way of Cornell’s challenge to a determination by the Regional Board of Review, upholding Notices of Violations issued by C. Thomas Parsons, Deputy Fire Chief and Fire Marshall for the City of Ithaca.

DISCUSSION

The Court finds that the respondents’ determinations have a rational basis and should not be disturbed. The legal authority for a narrow interpretation of the grandfather clause is Justice Monserrate’s decision in **Town of Conklin v. Ritter** (Supreme Court, Broome Co., Index No. 98-2690, November 12, 1999), expressly affirmed by the Appellate Division [285 AD2d 855 (Third Dept., 2001)]. Justice Monserrate noted that the promulgation of safety measures aimed at the occupants of a building are incident to the maintenance of the building and therefore, not subject to the grandfather clause.

Here, it is clear that the occupancy limit and exit requirements are addressed to the safety of the occupants.

The Court notes that it was not arbitrary, irrational or unlawful for the respondents to follow Town of Conklin v. Ritter and ignore the holding in Rabinor v. City of Ithaca Building Code Board of Appeals [252 AD2d 290 (Third Dept., 1998)]. In Rabinor the question presented was whether the City could mandate that all residential buildings in the City be equipped with interconnected smoke and heat detections systems, even those plainly beyond the reach of the Uniform Building Code because they were built before 1984. The Court held that the City did not have such power.

In the instant case, the State is not imposing a retroactive construction mandate. It is merely interpreting the law to give Cornell a choice, to wit: either continue to use the lecture hall with an occupancy limit of fifty, or install a second exit.

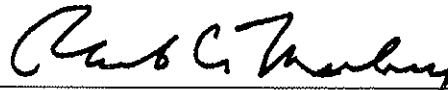
Having addressed the underlying question, the Court need not reach the other issues raised by the parties.

CONCLUSION

For the foregoing reasons the petition/complaint is hereby dismissed.

This shall constitute the order of the Court.

Signed this 4TH day of August 2009 at Ithaca, New York.



ROBERT C. MULVEY, J.S.C.