

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

CORNELL UNIVERSITY,

Petitioner/Plaintiff,

Against

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 of 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 Chief and Fire Marshall, City of Ithaca Fire
Department,

Respondents/Defendants.

Complaint
COMPLAINT AND PETITION

Index No. *09-0220*

RJI No. *2009-0013-11*

2009 FEB 27 AM 9:03

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF TOMPKINS:

Cornell University, by its counsel, files this complaint pursuant to CPLR Section 3001 ("CPLR") for a declaratory judgment that Code Interpretation 2008-01 issued by respondent/defendant New York State Department of State through respondent/defendant Ronald E. Piester, in his capacity as Director of New York State Division of Code Enforcement and Administration is invalid and contrary to law; and in addition brings this petition pursuant to Article 78 of the CPLR to challenge the Notices of Violation issued by respondent/defendant City of Ithaca, through respondent/defendant C. Thomas Parsons, in his capacity as City of Ithaca, Deputy Fire Chief and Fire Marshall, on November 4, 2008, and to challenge the

Decisions dated January 28, 2008 of the respondent/defendant New York State Department of State Capitol Region-Syracuse Board of Review through respondent/defendant Richard T. Lafferty, in his capacity as Acting Chairman of the New York State Department of State-Capital Region-Syracuse Board of Review dated January 28, 2009.

1. In April 2008, respondent/defendant Ithaca City Fire Marshall Tom Parsons ("Parsons") submitted a request for a Code Interpretation from the New York Secretary of State, inquiring as to whether petitioner/plaintiff Cornell University's ("Cornell," "Petitioner," "Plaintiff," or "Petitioner/Plaintiff") Myron Taylor Hall on the Cornell campus, built in or around 1932, must comply with the 2007 Fire Code of New York State ("2007 FCNYS"), although it was clearly built before 1984. Parson's opinion was that the application of Section 19 of Chapter 707 of the law of 1981 ("Section 19") precluded the enforcement of 2007 FCNYS 1028.3 to buildings constructed before 1984. See Exhibit A-4, to the Affidavit of Norma W. Schwab sworn to on February 26, 2009 ("Schwab Aff.").

2. On July 11, 2008, respondent/defendant Ronald Piester ("Piester"), Director of New York State Division of Code Enforcement and Administration, issued initial Code Interpretation 2008-01 and determined that unless another exit access doorway was installed, the lecture halls in Myron Taylor must be posted at a maximum capacity of 50 persons. See Exhibit A-5 to Schwab Aff.

3. Upon receipt of this determination from Piester, Parsons served Cornell with Notices of Violations for Myron Taylor and Sibley Hall (on July 22 and July 23, 2008, respectively), both buildings on the Cornell campus. See Exhibit A-6 to Schwab Aff.

4. Cornell's Associate University Counsel Norma W. Schwab ("Schwab") then contacted Joseph Ball, Esq. ("Ball") of the New York State Department of State ("NYS DOS"),

Office of Counsel, to question Code Interpretation 2008-01; it was and is Cornell's position that the effect of Section 19 precludes the application of 2007 FCNYS 1028.3 to the subject lecture halls, as the buildings were clearly built before 1984. Mr. Ball agreed to look into the matter. Several phone discussions between Ball and Schwab followed. Schwab Aff. ¶ 4.

5. Ultimately a letter clarifying initial Code Interpretation 2008-01 from respondent/defendant Piester dated August 1, 2008 to Parsons and copied to Cornell agreed that unless a similar local law was in place in 1981, or any reconstruction, alteration or conversion took place after 1984, then by virtue of Section 19, "the requirements set forth in 1018.1 and 1014.1 of the FCNYS, as made applicable to existing buildings by Section 1028.3 of the 2007 FCNYS, do not apply to buildings constructed or under construction prior to January 1, 1984." The letter cites to Rabinor v. City of Ithaca Building Code, Board of Appeals, 252 A.D.2d 290 (Third Dept., 1998), which construed Section 19. See Exhibit A-7 to Schwab Aff.

6. There was no local law in existence in 1984 similar to the relevant portions (see #5 above) of the 2007 FCNYS, nor has there been any additions to or reconstruction, alterations or conversion of Myron Taylor Hall since 1984. See Exhibit A-4 to Schwab Aff.

7. Following receipt of the August 1, 2008 Piester letter clarifying Code Interpretation 2008-01, Parsons issued to Cornell Inspection Reports dated August 5, 2008 showing the relevant violations have been abated/corrected, commenting "Letter from NYSDOS received-cited Code Sections cannot be applied to this building." See Exhibit A-9 to Schwab Aff.

8. Cornell assumed this issue was resolved. However, petitioner/plaintiff received a cover letter written by Piester, and a revised Code Interpretation 2008-01 dated October 17, 2008. Revised Code Interpretation 2008-01 relies on a 2001 case that had apparently only

recently come to the attention of NYSDOS – Town of Conklin v. Ritter, 285 A.D.2d 855 (Third Dept., 2001). See Exhibit A-2 to Schwab Aff.

9. Following his receipt of revised Code Interpretation 2008-01 dated October 17, 2008, on November 4, 2008, Parsons served petitioner/plaintiff with Notices of Violation regarding the subject of exit access doorways pursuant to FCNYS Section 1028.3, identical to the subject of the prior abated Notices of Violation dated July 22 and 23, 2008. These November 4, 2008 Notices of Violation diminish Cornell's use of the subject classrooms in Myron Taylor and Sibley Halls from 85 to 50 persons. Exhibit A-1 to Schwab Aff.

10. Further telephone discussions between Schwab and Ball ensued wherein Schwab made futile attempts to convince Ball that Section 19 clearly covers the means of egress/exit access doorway Notices of Violations for Myron Taylor and Sibley Halls, and therefore, the 2007 FCNYS Section 1028.3 should not be applied to Cornell to diminish its legally existing use of its buildings built long before 1984. See Schwab Aff. ¶ 5.

11. On November 13, 2008, petitioner/plaintiff duly filed its Applications for Variance or Appeal – one for Myron Taylor Hall and one for Sibley Hall – with the Finger Lakes Regional Office – Codes Division of the NYSDOS (“Applications”). The Applications appealed the Notices of Violations issued by Parsons on November 4, 2008 alleging violations of 2007 FCNYS Section 1028.3, and they also challenged the validity of revised Code Interpretation 2008-01, as it was clear that Parsons was basing the Notices of Violation solely on revised Code Interpretation 2008-01. (Exhibit A to Schwab Aff. (the Application for Variance or Appeal for Myron Taylor Hall); Exhibit B to Schwab Aff. (the Application for Variance or Appeal for Sibley Hall, included for purposes of a complete record; it is identical to Exhibit A but for its relation to a different building).

12. Telephone discussions followed between Parsons and Schwab, and Schwab and Ball regarding whether or not respondent/defendant NYSDOS Capital Region-Syracuse Board of Review (“Regional Board of Review”) would hold a hearing on Petitioner’s/Plaintiff’s Applications, and if so, when and where the hearing would be held.

13. A letter dated December 19, 2008 from Ball was received by Cornell, stating that “The Regional Review Board has no jurisdiction to hear or decide an appeal of revised Code Interpretation 2008-01” and that “the only orders or determinations that are properly before the Regional Board of Review on this appeal are the Notices of Violation issued by the City of Ithaca Fire Department.” Ball’s letter further makes it clear that revised Code Interpretation 2008-01 is not the determination of an administrative official but rather was issued pursuant to Executive Law when he writes:

Code Interpretation 2008-01 is *not* an order or determination of “an administrative official charged to enforce or purporting to enforce the Uniform Code.” Code Interpretation 2008-01 is a written interpretation of the Uniform Code issued by the Secretary of State upon written request of an official responsible for the administration and enforcement of the provisions of the Uniform Code. Code Interpretation 2008-01 was issued pursuant to Executive Law section 376(4), which authorizes the Secretary of State to issue such written interpretations and provides that “(s)ubsequent enforcement of such code shall be consistent with such written interpretations.”

The letter also states that Cornell and Parsons would be notified if a hearing was to be held. See Exhibit C to Schwab Aff.

14. On January 13, 2008, petitioner/plaintiff was notified by Mr. Richard Thomson of the Finger Lakes Regional Office of NYSDOS Code Division that respondent/defendant Regional Board of Review would be meeting on January 15, 2009, but that no testimony would be taken and the decision would be based on the record before the respondent/defendant Regional Board of Review.

15. Schwab submitted an email dated January 13, 2009 as a supplemental submission to Petitioner's/Plaintiff's Applications directing the attention of respondent/defendant Regional Board of Review to 2007 FCNYS Section 1001.2, which contains exceptions to Chapter 10, Means of Egress. Schwab submitted that those exceptions were not considered in revised Code Interpretation 2008-01 to Cornell's detriment. See Exhibit D to Schwab Aff.

16. On January 30, 2008, Petitioner received Decisions on Petition No. 2008-0647 (Myron Taylor Hall) and No. 2008-0702 (Sibley Hall) both dated January 28, 2009, signed by respondent/defendant Richard T. Lafferty ("Lafferty"), the acting Chairman of respondent/defendant Regional Board of Review. For both buildings, the Regional Review Board determined "the appeal reflected in the Petition is denied in its entirety." The Decisions consider the impact of 2007 FCNYS 1001.1 and 1001.2 as requested by Schwab in her January 13 e-mail, and determine that "in that the exception is applicable to alterations and the petition does not concern alterations, the exception to section 1001.2 of the 2007 FCNYS is not applicable to the building in question." Respondent/defendant also determined it did not have the power to overrule or modify Code Interpretation 2008-01, and therefore Parsons' Notices of Violation were consistent with the Code Interpretation. See Exhibit E to Schwab Aff.

17. Respondent/defendant Parsons' Notices of Violation dated November 4, 2008 constituted a failure to perform his lawfully required duty, were in excess of his jurisdiction, contrary to laws, (based as they were on respondent/defendant Piester's revised Code Interpretation 2008-01 which was contrary to law and invalid). Respondent/defendant Lafferty's Decision to uphold Parsons' Notices of Violation was likewise contrary to law, and as such all Respondent's/Defendant's actions in this matter were affected by an error of law, contrary to law, and were arbitrary and capricious.

18. Cornell has no adequate remedy at law to challenge the legality of Code Interpretation 2008-01.

WHEREFORE, Cornell respectfully requests that this Court enter a judgment:

A. Pursuant to Section 3001 of the Civil Practice Law and Rules a judgment:

1) That Code Interpretation 2008-01 is contrary to law and invalid, and as applied against Cornell, arbitrary and capricious; and

2) Ordering respondent/defendant NYSDOS and its Division of Codes Enforcement and Administration, through respondent/defendant Piester, to issue a corrected Code Interpretation 2008-01 in compliance with the statutory exceptions set forth in Section 19 of Chapter 707 of the Law of 2001; and

B. Pursuant to Article 78 of the Civil Practice Law and Rules:

1) Vacating and reversing the Decisions of respondents/defendants Lafferty and Regional Review Board of Review dated January 28, 2009 denying Cornell's Applications for Variance or Appeal;

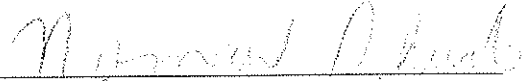
2) Vacating the Notices of Violation served upon Cornell by respondent/defendant City of Ithaca through respondent/defendant Parsons on November 4, 2008;

3) Ordering respondents/defendants City of Ithaca and Parsons to issue Notices of Abatement or correction of the violations and/or Notices that the Notices of Violation have been withdrawn;

4) Enjoining respondents/defendants City of Ithaca and Parsons from issuing Notices of Violation under 2007 FCNYS Sections 1028.3, and any future codification of the same, for Cornell owned buildings constructed prior to 1984, which have not been the subject of

reconstruction, alteration or conversion since that time, together with such other, further or different relief as to this Court may seem just and proper.

Dated: February 26, 2009



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