

Dagaev v Village of Highland Falls
2018 NY Slip Op 33854(U)
March 12, 2018
Supreme Court, Orange County
Docket Number: 10185/2017
Judge: Sandra B. Sciortino
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To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
**KATHERINE DAGAEV, PATRICK FLYNN,
LAURA MILSOM and SHARON GUY,**
Petitioners,

**DECISION AND ORDER
INDEX NO.: 10185/2017
Motion Date: 2/23/18
Sequence No. 2**

-against-

VILLAGE OF HIGHLAND FALLS, NEW YORK,
Respondent,

**FOR AN ORDER PURSUANT TO ARTICLE 78
OF THE CIVIL PRACTICE LAW AND RULES,**

ORIGINAL

-and-

**KENNETH SCOTT, CHIEF OF POLICE,
VILLAGE OF HIGHLAND FALLS, NEW YORK,**
Proposed Intervenor/Respondent.,

-----X
SCIORTINO, J.

The following papers numbered 1 to 5 were read on this unopposed motion by the proposed Intervenor/Respondent Kenneth Scott, Chief of Police (Chief Scott), for an order permitting Chief Scott to intervene in the above matter and to be added as a party respondent, deeming the Article 78 Petition amended as such, and permitting Chief Scott to serve his answer:

PAPERS

NUMBERED

Notice of Motion to Intervene/Memorandum of Law/Affirmation
in Support (Brady)/Affidavit/Proposed Verified Answer

1 - 5

Background and Procedural History

The essential facts which underpin this application are not substantially disputed: Chief Scott

[* 2]

has served as Police Chief of the Village of Highland Falls, New York (Village) since 2012. In December 2016, Chief Scott was placed on paid Administrative Leave. In January 2017, the former Mayor of the Village, petitioner Patrick Flynn levied disciplinary charges (amended by letter dated January 26, 2017) against Chief Scott, after which he was suspended without pay, for a period of thirty (30) days.

On February 10, 2017, at the commencement of a disciplinary hearing, the parties reached a Settlement Agreement with respect to the outstanding charges. As part of the settlement agreement, Chief Scott tendered a letter advising of his voluntary and irrevocable retirement, effective August 30, 2017.

In March 2017, a new Village mayor, Joseph D'Onofrio, was elected, and took office in April, 2017. Chief Scott asserts that thereafter, and in accordance with the provisions of the Disciplinary Settlement Agreement, he consulted with the Village on police department matters.

On June 19, 2017, at a meeting of the Village Board, the Board of Trustees, after meeting in executive session, voted 3-1, with one abstention, to modify the Disciplinary Settlement Agreement to rescind the requirement that Chief Scott retire on August 30, 2017, unless he so chose. Chief Scott was required to go on a 26-week probationary period.

The Village then convened a special meeting on August 25, 2017, at which time the Village Board of Trustees voted 3-2 to permit Mayor D'Onofrio to execute the modification to the Disciplinary Settlement Agreement on the same date. Chief Scott re-commenced his service as Village Chief of Police on or about June 20, 2017, and has continued to work in that capacity.

On December 12, 2017, petitioners filed a Notice of Petition and Petition (Sequence #1) against the Village, seeking an order pursuant to Article 78 of the Civil Practice Law and Rules,

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declaring that the August 25, 2017 vote of the Village Board was null and void because of a violation of the Village's conflict of interest rules.

On January 24, 2018, Chief Scott filed the within motion to intervene, pursuant to Civil Practice Law & Rules sections 1012[a] and 1013 (Sequence #2). Chief Scott argues that intervention should be permitted when the intervenor has a real and substantial interest in the outcome of the proceeding; where the representation of the proposed intervenor's rights by the existing parties may be inadequate and where, though not participating in the proceeding, the proposed intervenor would be bound by any order or judgment. Because an adverse ruling in favor of the petitioners would terminate his employment, and allegedly damage his reputation, Chief Scott asserts that he has a real and substantial interest in the proceedings. He argues that his intervention will neither unduly delay nor prejudice any existing party.

No opposition has been filed to the motion. However, on February 2, 2018, the Village filed a Motion to Dismiss (Sequence #3). That motion was served on petitioners, who apparently responded, although the Court has not yet received the opposing papers. Reply papers were served and filed, and that motion has been deemed to be fully submitted.

Upon receipt of the Village's motion, Chief Scott filed his own motion to dismiss (Sequence #4). However, because the within motion was still pending, Chief Scott's motion papers have not been served on either petitioners or the Village.

Discussion

Upon the foregoing papers, the unopposed motion is granted.

Section 1012[a](2) of the Civil Practice Law and Rules provides that upon a timely motion, any person shall be permitted to intervene in any action, when, *inter alia*, the representation of the

person's interest is or may be inadequate and the person is or may be bound by the judgment. Section 1013 provides that any person may be permitted to intervene in any action when, *inter alia*, the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

The Second Department has held that where the intervenor has a real and substantial interest in the outcome of the proceeding, intervention should be allowed. (*County of Westchester v. Department of Health of State of New York*, 229 AD2d 460 [2d Dept 1996]) An even broader right is granted by Civil Practice Law & Rules section 7802)d) grants even broader power to "allow other interested persons to intervene." (*In re Village of Sloatsburg*, 48 Misc. 3d 1206(A) [Rockland Co. 2015])

In the instant matter, Chief Scott asserts, and no one has disputed that the potential termination of his employment creates a real and substantial interest in the outcome of the Article 78 proceeding. The interests of justice require that he be permitted to intervene in this action; and to proceed as a respondent to defend his interests against petitioners.

Conclusion

Based upon the foregoing, it is hereby ORDERED as follows:

1. Chief Scott's application for leave to intervene as a respondent is granted. He shall serve his Answer on petitioner and the Village on or before March 19, 2018.
2. The Article 78 petition is hereby deemed amended to add the name of Chief Scott as a party respondent.

- [* 5]
3. Chief Scott shall serve his Motion to Dismiss (Sequence #4) upon petitioners and the Village on or before March 19, 2018.
 4. Responsive papers to all motions shall be served on or before April 2, 2018.
 5. Reply papers to all motions shall be served on or before April 6, 2018, when all motions shall be deemed fully submitted.

The foregoing constitutes the decision and order of the court.

Dated: March 12, 2018
Goshen, New York

ENTER:

HON. SANDRA B. SCIORTINO, J.S.C.

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