

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

683

CA 22-01159

PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ.

NEW YORK STATE LAW ENFORCEMENT OFFICERS UNION,
COUNCIL 82, AFSCME, AFL-CIO, LOCAL 3471, STEVE
VINE, AS PRESIDENT OF LOCAL 3471, RANDALL
GRENIER, JR., AND DANIEL HICKEY,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

CITY OF GENEVA, DEFENDANT-RESPONDENT,
ET AL., DEFENDANTS.

JESSICA FARRELL, THERESA JOHNSON, CHARLES KING,
AMARIS ELLIOTT-ENGEL, AHMAD WHITFIELD, WIL WOLF
AND CARRIE CORRON, AS MEMBERS OF FORMER GENEVA
POLICE REVIEW BOARD, PROPOSED-INTERVENORS
DEFENDANTS-APPELLANTS.

FRESHFIELDS BRUCKHAUS DERINGER US LLP, NEW YORK CITY (DAVID M. HOWARD
OF COUNSEL), FOR PROPOSED-INTERVENORS DEFENDANTS-APPELLANTS.

ENNIO J. CORSI, GENERAL COUNSEL, ALBANY (CHRISTINE CAPUTO GRANICH OF
COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

MIDEY, MIRRAS & RICCI, LLP, GENEVA (EMIL J. BOVE, JR., OF COUNSEL),
FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Ontario County (Craig
J. Doran, J.), entered July 11, 2022. The order denied the motion of
appellants for leave to intervene and file a notice of appeal.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking, inter
alia, a declaration invalidating Local Law No. 1-2021 (Local Law) of
defendant City of Geneva (City), which amended the Geneva City Charter
to establish a Police Review Board (Board). Supreme Court thereafter
entered a judgment (denominated order) that, inter alia, granted
plaintiffs' cross-motion for summary judgment on the complaint and
declared the Local Law invalid, thereby effectively dissolving the
Board. Appellants, as members of the former Board, then filed a
motion seeking leave to intervene as party defendants for the purpose
of taking an appeal from the judgment and, on appeal, defending the
validity of the Local Law. Plaintiffs and defendants opposed the

motion on, inter alia, the ground that appellants lacked capacity to intervene in the litigation. Appellants now appeal from an order that denied their motion. We affirm.

Initially, to the extent that appellants contend that the issue of capacity is irrelevant because they are seeking to intervene only for the purpose of taking an appeal as party defendants, and not to commence litigation as plaintiffs, we reject that contention. Capacity "concerns a litigant's power to appear and bring its grievance before the court" (*Community Bd. 7 of Borough of Manhattan v Schaffer*, 84 NY2d 148, 155 [1994]; see *Matter of County of Chautauqua v Shah*, 126 AD3d 1317, 1320 [4th Dept 2015], *affd* 28 NY3d 244 [2016]), including the "authority to sue or be sued" (*Silver v Pataki*, 96 NY2d 532, 537 [2001], *rearg denied* 96 NY2d 938 [2001]). " 'Being artificial creatures of statute, such [governmental] entities have neither an inherent nor a common-law right to sue. Rather, their right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate' " (*Matter of Town of Riverhead v New York State Bd. of Real Prop. Servs.*, 5 NY3d 36, 41-42 [2005], quoting *Community Bd. 7 of Borough of Manhattan*, 84 NY2d at 155-156).

It is undisputed that appellants lack express authority to intervene in this matter inasmuch as the Local Law does not confer any such authority on the Board or its members (see *City of New York v State of New York*, 86 NY2d 286, 293 [1995]; *Matter of James v Donovan*, 130 AD3d 1032, 1034 [2d Dept 2015], *lv denied* 26 NY3d 1048 [2015]). Appellants correctly contend that "[a]n express grant of authority is not always necessary. Rather, capacity may be inferred as a necessary implication from the powers and responsibilities of a governmental entity . . . , provided, of course, that there is no clear legislative intent negating [such authority]" (*Matter of Citizen Review Bd. of the City of Syracuse v Syracuse Police Dept.*, 150 AD3d 121, 125 [4th Dept 2017] [internal quotation marks omitted]; see *Town of Riverhead*, 5 NY3d at 42; *Matter of Graziano v County of Albany*, 3 NY3d 475, 479 [2004]).

Contrary to appellants' contention, however, we conclude that section 7.5 of the Geneva City Charter, which grants the authority to pursue litigation and appeals involving the rights of the City to the "City Attorney . . . with the approval of the City Council," evinces a "clear legislative intent" to deny such authority to the Board (*Citizen Review Bd. of the City of Syracuse*, 150 AD3d at 125). Furthermore, we reject appellants' contention that the power to enforce the validity of the enabling legislation may be inferred from the enabling legislation itself. "[T]he power to bring a particular claim may be inferred when the agency in question has 'functional responsibility within the zone of interest to be protected' " (*Community Bd. 7 of Borough of Manhattan*, 84 NY2d at 156, quoting *Matter of City of New York v City Civ. Serv. Commn.*, 60 NY2d 436, 445 [1983], *rearg denied* 61 NY2d 759 [1984]). Here, while the Board's functional responsibility included enforcement of the provisions of the Local Law, its " 'zone of interest' " did not include defending

the validity of that ordinance (*id.*). We therefore conclude that appellants lack the capacity to intervene in this matter for the purpose of taking an appeal from the judgment, and that appellants' motion was thus properly denied.

In light of our determination, we need not address appellants' remaining contentions.