

Matter of Sharpe v Sturm
2005 NY Slip Op 30574(U)
July 13, 2005
Supreme Court, Westchester County
Docket Number: 0989/05
Judge: Richard A. Molea
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of
JOHN SHARPE and JAMES MINIHAN,

Petitioners,

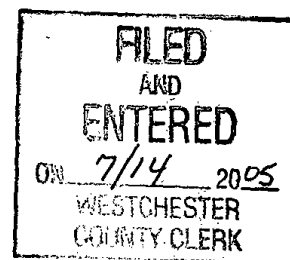
For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

- against -

BARNETT STURM, individually and in his
capacity as Superintendent of Schools for the
Lakeland Central School District, and the
LAKELAND CENTRAL SCHOOL DISTRICT,

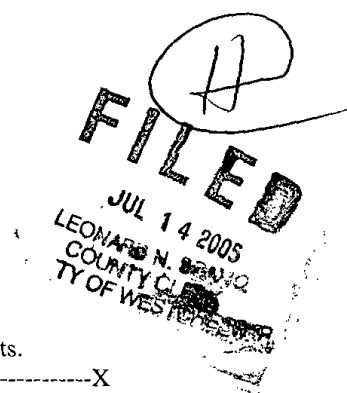
Respondents.

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MOLEA, J.



DECISION & ORDER

Index No. 0989/05



The following papers, numbered one (1) through one-hundred and eleven (111) were read upon consideration of petitioner Sharpe's motion for reargument and renewal of the Decision and Judgment of this Court, entered May 5, 2005, granting respondents' motion to dismiss this proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules (CPLR).

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Upon the foregoing papers, it is ordered and adjudged that the instant motion for reargument and renewal is disposed of as follows:

Petitioners brought the underlying special proceeding by petition submitted pursuant to Article 78 of the CPLR, seeking an order of this Court (1) reversing, annulling and setting aside the determination of the respondent Lakeland Central School District (hereinafter, LCSD), rendered on September 1, 2004, resolving to deny all statutory indemnification and legal representation to petitioner Sharpe in connection with a civil lawsuit pending in the United States District Court, Southern District of New York, (2) directing respondent LCSD to provide the petitioners with legal counsel of their own choosing in connection with the above-referenced federal litigation, and (3) directing respondent LCSD to pay all legal fees incurred by the petitioners in connection with the instant special proceeding. In support of the instant petition, the petitioners claimed that Education Law §§ 3023 and 3811, and Public Officers Law § 18 compelled the respondent LCSD to provide the petitioners with legal counsel of their own choosing, which includes assumption of responsibility for the compensation of such legal counsel, in connection with the petitioners' defense in the above-referenced federal litigation. Respondents opposed the instant petition and moved this Court to dismiss same, arguing that the petitioners failed to comply with the notice requirements established by Education Law §§ 3023 and 3811, and Public Officers Law § 18, and thereby failed to satisfy the statutory conditions precedent to the statutory entitlements sought to be enforced through the underlying special proceeding.

By Decision and Judgment, entered on May 5, 2005, this Court granted the respondents' motion to dismiss the underlying special proceeding upon finding that the petitioners' failure to

comply with the statutory notice requirements prescribed under Public Officers Law § 18[5][i] and Education Law § 3811[1][a] constituted a failure to satisfy a condition precedent to a successful application seeking indemnification and legal representation under the terms of these statutes.

With respect to petitioner Sharpe's application for reargument, same is properly addressed to the sound discretion of the Court and may only be granted upon a showing that the Court misapprehended the relevant facts raised by the proponent in connection with the underlying proceeding or misapplied any controlling principle of law, thereby mistakenly reaching its earlier decision (*see*, CPLR 2221[d][2]; *see also*, *Pahl Equip. Corp. v. Kassiss*, 182 AD2d 22, *lv. denied, app. dismissed* 80 NY2d 1005; *Schneider v. Solowey*, 141 AD2d 813; *Foley v. Roche*, 68 AD2d 558, 567). The statutory limitations upon the availability of relief upon reargument reflect the well-settled view that a motion seeking such relief is not designed to serve as a vehicle which may enable an unsuccessful party to re-litigate an issue which was previously decided adversely (*see*, *McGill v. Goldman*, 261 AD2d 593, 594; *see also*, *Matter of Mayer v. National Arts Club*, 192 AD2d 863, 865; *Pahl Equip. Corp. v. Kassiss*, *supra*, at 594; *Bankers Trust Co. of California v. Payne*, 188 Misc.2d 726). In this regard, as petitioner Sharpe supports the instant application with the newly presented factual claim that he sent a letter to the Assistant Superintendent of Business of LCSD, Susan Palamarczuk, on August 24, 2004, the standard for leave to reargue has not been met as he has failed to demonstrate that the Court misapprehended relevant facts raised in connection with the underlying special proceeding (*see*, *Grassel v. Albany Medical Center Hosp.*, 223 AD2d 803, 805, *lv. dismissed, lv. denied* 88 NY2d 842; *see also*, *Pahl Equip. Corp. v. Kassiss*, *supra*, at 594; *Duque v. Ortiz*, 154 AD2d 333, 334; *Klein v. Mount*

Sinai Hosp., 121 AD2d 164). Accordingly, petitioner Sharpe's instant application seeking reargument and denial of respondents' motion to dismiss is denied.

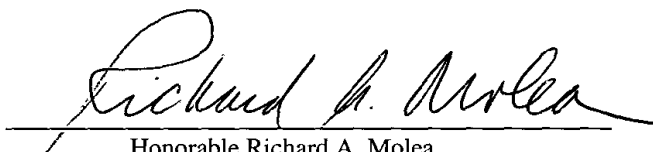
With respect to that branch of the defendant's present application which seeks renewal, it is statutorily proscribed that a motion of this nature must be based upon facts that were not offered in support of the prior motion, which would alter the prior determination, or demonstrate that there has been a change in the law which would alter the prior determination (*see*, CPLR 2221[e][2]). Concomitantly, the movant must support the motion to renew with reasonable justification for the failure to present such facts before the court in support of the previously decided motion (*see*, CPLR 2221[e][3]). In support of the instant motion seeking leave to renew based upon new facts which were not offered in support of the underlying petition, counsel for petitioner Sharpe claims that newly discovered evidence is presently available. Specifically, counsel claims that he has come into possession of a letter allegedly sent by petitioner Sharpe to the Assistant Superintendent of Business of LCSD, Susan Palamarczuk, on August 24, 2004, wherein petitioner Sharpe provided notice of the pending federal litigation and requested that LCSD provide him with legal representation in connection with those proceedings. However, the Court notes with significance that petitioner Sharpe has neglected to provide the Court with any justification for his failure to present such evidence before the Court in connection with its consideration of his underlying petition and the respondents' motion to dismiss same. Moreover, as petitioner Sharpe asserts that he was the author of the above-referenced letter constituting newly discovered evidence, any claim he might offer suggesting that he was reasonably justified in his failure to present such evidence before the Court in support of the previously decided motion is untenable. Accordingly, although petitioner Sharpe claims that he has recently

discovered new facts bearing upon the Court's previous determination of the respondents' motion to dismiss, his failure to provide a reasonable justification for his failure to submit such evidence in support of the underlying petition compels the denial of the instant application seeking renewal (*see*, CPLR 2221[e][3]; *see also*, *Giardina v. Parkview Court Homeowners' Assoc.*, 284 AD2d 953; *Residents For A More Beautiful Port Washington, Inc., v. Newburger*, 281 AD2d 484; *Eagle Insurance Company v. Lucero*, 276 AD2d 695, 696).

Based upon the foregoing, petitioner Sharpe's instant application seeking leave to renew and reargue the Court's earlier determination granting the respondents' motion to dismiss the underlying special proceeding is granted, and upon reargument and renewal the Court adheres to its original decision.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
July 13, 2005



Honorable Richard A. Molea
Acting Justice of the Supreme Court