

Maloney v Lippman

2006 NY Slip Op 30643(U)

July 19, 2006

Sup Ct, NY County

Docket Number: 103119/06

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

JANE S. SOLOMON

PRESENT:

PART 55

Index Number : 103119/2006

MALONEY, JAMES M.

vs

LIPPMAN, JONATHAN

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE 6/15/06

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 5 were read on this motion to/for dismiss

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1-3

Answering Affidavits — Exhibits _____

4-5

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the annexed memorandum decision and order.*

FILED

JUL 20 2006

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7-19-06

JANE S. SOLOMON

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

NOT TO BE REPRODUCED IF FULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, I.A.S. PART 55

-----X
JAMES M. MALONEY, An Attorney At Law,

Plaintiff,

INDEX NO. 103119/06

-against-

DECISION AND ORDER

JONATHAN LIPPMAN, in his official
capacity as Chief Administrator
of the Courts of the State of
New York,

Defendant.

-----X

SOLOMON, J.

Defendant Jonathan Lippman, sued here in his official capacity as Chief Administrator of the Courts of the State of New York, moves, pursuant to CPLR 3211 (a) (7), for an order dismissing the amended complaint. The amended complaint seeks a declaration that the Secure Pass system that defendant instituted in April 2002 violates Article 6, § 28 of the State Constitution.

As this court has explained in plaintiff's related Article 78 proceeding,¹ prior to September 11, 2001, attorneys could bypass the metal detectors at court entrances by showing the court officers an attorney identification card issued by the New York State Office of Court Administration (OCA). Those cards were issued without a background investigation. Shortly after September 11, 2001, all persons, including attorneys, who sought to enter a State courthouse were required to pass through the magnetometers at the entrance. In April 2002, in order to reduce

¹ The decision in Matter of Maloney v Office of Court Administration, index number 101898/06, is issued the same day as the decision herein.

the delay in court business caused by attorneys having to wait on line and to pass through the magnetometers, OCA instituted the Secure Pass program. A person with a Secure Pass is allowed to enter New York State courthouses, without passing through metal detectors, or being subject to a search. Applicants for a Secure Pass must consent to a background investigation pertaining to their criminal history, if any. A number of attorneys, including plaintiff, have been denied a Secure Pass on the basis of OCA's investigation of their criminal histories.

Article 6, § 28 (b) of the New York State Constitution provides, in relevant part, that "[t]he chief administrator ... shall supervise the administration and operation of the unified court system." Article 6, § 28 (c) provides:

The chief judge ... shall establish standards and administrative policies for general application throughout the state, which shall be submitted by the chief judge to the court of appeals Such standards and administrative policies shall be promulgated after approval by the court of appeals.

Thus, on the one hand, the authority of the chief administrator "is not broad and unlimited but is subject to being exercised in conformity with standards which have been established in accordance with constitutional prescription" (Matter of Morgenthau v Cooke, 56 NY2d 24, 33 [1982]), and on the other, "with respect to supervision or management, as distinguished from policy formulation, the Constitution places no limitations on the duties the Chief Judge may delegate to the administrator." Corkum v Bartlett, 46 NY2d 424, 429 (1979). Accordingly, the

question that this case raises is whether the Secure Pass program falls within the "administration and operation of the unified court system," in which case, defendant had the authority to institute it, or constitutes an "administrative polic[y] for general application throughout the state," in which case, defendant lacked the necessary authority.

It appears to the court that, while the initial decision to institute security measures at the entrances to the courts in the 1970s, where, previously, there were none, may well have been a matter of policy, the subsequent development of the various components of the courts' security system is a matter of management, rather than of policy formulation. It is indisputable that defining the duties of court officers, e.g., to include perimeter checks before the courthouses open, is a matter of management. So, similarly, are the protocols for screening people as they enter. Here, the issue is somewhat less clear only because the Secure Pass program is carved out for attorneys, and because some attorneys are barred from participating in the program. It does not appear, however, that allowing such attorneys as have not been determined to pose security risks to enter without a security check at the courthouse entrance, so as to reduce the delay and disruption of court business that is caused by long lines at the entrance, is anything more than a managerial matter. This court notes that in Levenson v Lippman (4 NY3d 280 [2005]), a case in which the Court upheld the authority of the chief administrator to appoint administrative

judges to review enhanced fee awards to court-appointed attorneys and other personnel, the Court referred to the chief administrator's "regulatory power." Id. at 289.

Plaintiff argues that OCA's decisions to deny Secure Passes to certain attorneys are arbitrary, and he claims that the decision to deny him one violated his rights to due process and to the equal protection of the laws. That argument, and those claims, are moot in view of this court's decision in plaintiff's related Article 78 proceeding.

Nonetheless, an observation appears to be in order. While the court holds that it was within the Chief Administrative Judge's constitutional authority to institute the Secure Pass program, the court notes the informal nature of the Chief Administrative Judge's delegation of his authority to administer the program (the facts concerning OCA's denial of Maloney's application for Secure Pass, and his efforts to challenge that determination, are set forth in greater detail in the Article 78 decision). While such a lack of transparency as to the administration of the Secure Pass program does not rise to a constitutional dimension, it may, together with OCA's acknowledged lack of objective standards to be applied when an attorney with a criminal history applies for a Secure Pass, be a contributing factor in making arbitrary decisions in particular cases.

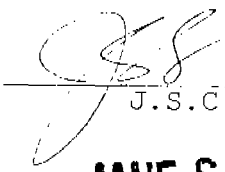
Accordingly, it hereby is
ORDERED that the motion to dismiss is granted, and the

complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: July 19, 2006

ENTER:


J.S.C.

JANE S. SOLOMON

FILED
JUL 20 2006
NEW YORK
COURT CLERK'S OFFICE