

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of THE TOWN OF COLONIE and PETER G. CRUMMEY, in his capacity as The Town Supervisor of the Town of Colonie,

Petitioners-Plaintiffs,

-against

THE CITY OF NEW YORK, ERIC ADAMS in his Capacity as the Mayor of the City of New York, and MOLLY WASOW PARK in her capacity as Commissioner of the New York City Department of Social Services, THE CITY OF ALBANY, KATHY SHEEHAN in her Capacity as the Mayor of the City of Albany and SURESTAY PLUS BY BEST WESTERN ALBANY AIRPORT,

Respondents-Defendants,

-and-

NEW YORK STATE OFFICE OF TEMPORARY DISABILITY AND ASSISTANCE

Nominal Respondent-Defendant.

For a Judgment Pursuant to Article 78 and for a Declaratory Judgment Under Article 30 of the Civil Practice Law and Rules.

Petitioners-Plaintiffs THE TOWN OF COLONIE, PETER G. CRUMMEY, in his capacity as Town of Colonie Town Supervisor, alleges as follows:

1. Petitioners-Plaintiffs, THE TOWN OF COLONIE, PETER G. CRUMMEY, in his capacity as Town Supervisor, by his attorney E. GUY ROEMER, Town of Colonie Town Attorney, as and for its Petition and Complaint, upon information and belief, alleges as follows:

NATURE OF PROCEEDING

2. The Town of Colonie brings this combined Article 78 special proceeding/complaint to enjoin Respondents-Defendants from establishing an unregulated homeless shelter in the Town of Colonie by, to wit, transporting and/or housing dozens, and possibly more, persons who are experiencing homelessness and who currently reside in the City of New York (the “Proposed Transfer”), to a proposed temporary shelter at the SureStay Plus by Best Western Albany Airport (hereinafter “Respondent Hotel”) located at 200 Wolf Road, Albany New York 12205.

3. Respondents-Defendants City of New York, Eric Adams, Molly Wasow Park, City of Albany and Kathy Sheehan (collectively “City Respondents”) decision for the Proposed Transfer exceeds their legal authority because the City Respondents only have authority to operate and create a homeless shelters in accordance with Article 2-A of the Social Services Law, and NYS Office of Temporary Disability and Assistance (OTDA) licensure requirements, which included plan submission and notice requirements under 18 NYCRR Parts 352, 491 and 900, which has not been done in this case.

4. Respondents-Defendants may not operate the Respondent Hotel as a temporary shelter and implement the Proposed Transfer under the purported powers of Respondents-Defendants’ Adams’ Emergency Executive Orders 224 and 398 (“EO 244” and “EO 398”).

5. The Respondents-Defendants’ use of EO 244 and EO 398 to effectuate the Proposed Transfer is *ultra vires* as it is based upon “the arrival of thousands of individuals seeking asylum” not as New York Executive Law § 24 requires, to protect the public health “in the event of a disaster, rioting, catastrophe or similar public emergency within the territorial limits of the [city]” or upon any “finding of the chief executive thereof that the public safety is imperiled thereby.”

6. Furthermore, the City of Albany and Kathy Sheehan in her capacity as the Mayor of the City of Albany does not have the authority to divert the influx of undocumented individuals/migrants/asylum seekers from the City of Albany to the Town of Colonie.

7. This Court should prohibit and enjoin the Proposed Transfer as it exceeds the Respondents-Defendants' authority under the limited scope of EO 224 and EO 398 as well as Executive Law § 24.

8. The Proposed Transfer would undoubtedly substantially increase the Town of Colonie's homeless population without any planning, coordination or funding in place to support this population in the long term, which persons are unlikely to be either returned to the City of New York or the City of Albany.

9. The Cities of New York and Albany have failed to provide any information to the Town of Colonie and have made no attempt to communicate with the Town of Colonie as to the plan to execute the Proposed Transfer of asylum seekers. The Town of Colonie has not been able to coordinate efforts regarding the services that individuals may require, the assistance they may need and the potential emergency responses that the Town will have to bear with the increased number of residents.

10. Moreover, notwithstanding the significant impact on the Town's already strained social services system and emergency response system, the Proposed Transfer will likely create its own public health impacts.

PARTIES

11. Petitioner-Plaintiff TOWN OF COLONIE is a municipal corporation duly formed by the laws of the State of New York, with a principal office located at 534 New Loudon Road, Latham, New York 12110.

12. Petitioner-Plaintiff PETER G. CRUMMEY is the Town of Colonie Town Supervisor and chief administrator for the Town of Colonie.

13. Respondent-Defendant CITY OF NEW YORK is a municipal corporation organized and existing under the Laws of the State of New York and is constituted as a social services district under Social Services Law § 61(1).

14. Respondent-Defendant Mayor ERIC ADAMS is the Mayor of the City of New York and chief executive officer of the City.

15. Respondent-Defendant MOLLY WASOW PARK is the Commissioner of the New York City Department of Social Services, which oversees the City's Department of Homeless Services and the social services district within the geographical boundaries of the City of New York.

16. Respondent-Defendant CITY OF ALBANY is a municipal corporation or organized and existing under the Laws of the State of New York.

17. Respondent-Defendant Mayor KATHY SHEEHAN is the Mayor of the City of New York and chief executive officer of the City.

18. Respondent-Defendant SURESTAY PLUS BY BEST WESTERN ALBANY AIRPORT is a domestic limited liability company and the owner of the premises, buildings and improvements at the real property at 200 Wolf Road, Albany, New York 12205.

19. Nominal Respondent-Defendant NEW YORK STATE OFFICE OF TEMPORARY DISABILITY AND ASSISTANCE is the State agency responsible for oversight of shelters in the State as defined under Social Services Law § 2(23).

JURISDICTION

20. This Court has jurisdiction over this matter pursuant to CPLR § 7803(3) because Respondents-Defendants made decisions that were beyond the scope of their lawful authority and

“in violation of lawful procedure, [were] affected by an error of law or [were] arbitrary and capricious or an abuse of discretion...”

21. Venue is proper in Albany County pursuant to CPLR § 506(b) because it is the County in which Petitioners-Plaintiffs conduct business, where the real property subject to the allegations and claims alleged in the petition and complaint are located and where the consequences of the actions of the Respondents-Defendants are taking place.

AS AND FOR A FIRST CAUSE OF ACTION

22. Petitioners-Plaintiffs repeat and reallege the previous paragraphs as set forth fully herein.

23. Respondents-Defendants cannot operate Respondent Hotel as a homeless shelter as it is outside the geographical boundaries of the City of New York and the City of Albany in contravention of the OTDA requirements.

24. The proposed shelter located at Respondent Hotel is in violation of the Albany County State of Emergency and Emergency Order.

25. Respondents-Defendants efforts to implement the Proposed Transfer to the Town of Colonie exceeds any legal authority that they have.

26. Accordingly, this Court should annul and enjoin Respondents-Defendants' determination to (i) use Respondent Hotel as a homeless shelter outside the City of Albany and City of New York and (ii) implement the Proposed Transfer.

AS AND FOR A SECOND CAUSE OF ACTION

27. Petitioners-Plaintiffs repeat and reallege the previous paragraphs as set forth fully herein.

28. Respondents-Defendants efforts to use the Respondent Hotel as a temporary shelter for adults exceeds their legal authority to do so under EO 224.

29. Respondents-Defendants have no legal authority to circumvent the executive orders of the County of Albany or the zoning rules and regulations of the Town of Colonie as a municipal entity.

30. Article 2-B of the NYS Executive Law provides no authority for the City of New York or the City of Albany to do anything outside of its own boundaries, nor to suspend NYS Law or a valid Executive Order issued by an equal municipal government, nor in contravention of the OTDA regulations.

31. Respondents-Defendants use of EO 398 extending EO 224 to circumvent their legal authority is improper as a matter of law.

32. Accordingly, this Court should annul and enjoin Respondents-Defendants' determination to (i) use Respondent Hotel as a homeless shelter outside the City of Albany and City of New York and (ii) implement the Proposed Transfer.

AS AND FOR A THIRD CAUSE OF ACTION

33. Petitioners-Plaintiffs repeat and reallege the previous paragraphs as set forth fully herein.

34. Respondents-Defendants' efforts to use the Respondent Hotel as a temporary homeless shelter is violative of lawful procedure, affected by error of law, arbitrary and capricious and an abuse of discretion.

35. Respondents-Defendants did not follow any legal or evidence-based process to make their determinations to transfer an unknown number of undocumented individuals, migrants and/or asylum seekers to the Town of Colonie.

36. Indeed, Respondents-Defendants expressly acted on subterfuge, misdirection and willful violation of executive orders of another co-equal government with no notice, coordination, communication or deliberation in any manner.

37. Respondents-Defendants gave no consideration whatsoever on the impact to the Town's community, legal framework, budgetary restrictions, limitations of emergency services, or the capacity of the Town of Colonie to absorb the City's homeless population.

38. Accordingly, this Court should annul and enjoin Respondents-Defendants' determination to (i) use Respondent Hotel as a homeless shelter outside the City of Albany and City of New York and (ii) implement the Proposed Transfer.

AS AND FOR A FOURTH CAUSE OF ACTION

39. Petitioners-Plaintiffs repeat and reallege the previous paragraphs as set forth fully herein.

40. Petitioners-Plaintiffs seek a declaratory judgment to specify and determine the rights and duties of the parties.

41. Pursuant to CPLR § 2001, Petitioners-Plaintiffs seek a declaratory judgment to specify and determine the rights and duties of the parties, including, but not limited to, that (i) Respondents-Defendants Proposed Transfer is *ultra vires*; (ii) the Respondents-Defendants are subject to applicable Executive Orders in the jurisdiction where a proposed shelter is located; and (iii) Respondents-Defendants are required to obtain licensure and registration through the New York State Office of Temporary Disability and Assistance before opening a temporary homeless shelter.

42. Pursuant to CPLR § 3001, a judicial declaration is necessary and appropriate at this time so each party may know their respective rights and duties so they may act accordingly.

AS AND FOR A FIFTH CAUSE OF ACTION

43. Petitioners-Plaintiffs repeat and reallege the previous paragraphs as set forth fully herein.

44. Based upon the foregoing, the balancing of the equities is in favor of Petitioners-Plaintiffs as they have no adequate remedy at law.

45. Unless Respondents-Defendants are permanently restrained from causing serious and irreparable injury, which includes injury to government, permanent injury to the community and injuries to individuals and families both inside and outside of the Respondents-Defendant's illegal shelter system.

46. For the same reasons outlined above in support of Petitioners-Plaintiffs' application for a preliminary injunction, the same reasons are repeated and re-alleged as if set forth fully herein, and which fully support permanent injunctive relief.

WHEREFORE, Petitioners-Plaintiffs respectfully request judgment as follows:

(a) Declaring that Respondents-Defendants are acting without lawful authority in violation of lawful procedure, making determinations affected by errors of law, acting arbitrarily and capriciously, and abusing their discretion in determining to (i) use the Respondent Hotel as a temporary homeless shelter and (ii) implementing the Proposed Transfer of an unknown number of homeless individuals from the City of New York;

(b) Annuling Respondents-Defendants' determinations to (i) use the Respondent Hotel as a temporary homeless shelter and (ii) implementing the Proposed Transfer of an unknown number of homeless individuals from the City of New York to the Town of Colonie;

(c) Temporarily restraining and preliminarily and permanently enjoining Respondents-Defendants from (i) using the Respondent Hotel as a temporary homeless shelter and (ii) implementing the Proposed Transfer of an unknown number of homeless individuals from the City of New York to the Town of Colonie;

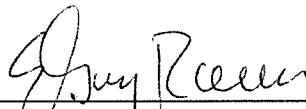
(d) Pursuant to CPLR § 3001, declaring the rights and other legal obligations of the parties;

(e) Awarding Petitioners-Plaintiffs their costs and disbursements; and

(f) Such other and further relief that this Court deems just and proper.

Dated: May 27, 2023
Town of Colonie, New York

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