



STATE OF NEW YORK
SUPREME COURT CHAMBERS
ULSTER COUNTY COURT HOUSE
KINGSTON, N.Y.

12401

VINCENT G. BRADLEY
JUSTICE

March 25, 1996

Mr. John Barbarite
Ms. Janet Lynn
19 Cottage Street
P.O. Box 6
Monticello, NY 12701

Martin S. Miller, Esq.
34 North Street
Monticello, NY 12701

Re: Barbarite and Lynn v. Village of Monticello, et al.
Sullivan County Special Term
RJI# 52-13752-95
Return date: 10/31/95

To the parties:

This letter represents the decision of the Court in the above matter. In this pro se taxpayer's proceeding brought pursuant to section 51 of the General Municipal Law, the petitioners seek to annul the severance agreement which the respondent Village entered into with the now former Village Manager, William Cummings. Respondents move to dismiss pursuant to CPLR 3211(a)(7) on the grounds that the complaint fails to state a cause of action. They also move to dismiss on the grounds of standing/lack of capacity to sue.

After reviewing the parties' submissions, the Court concludes that the motion must be granted. It is well established that to sustain an action under General Municipal Law section 51, a petitioner must show that the municipal actions at issue were "fraudulent, or a waste of public property in the sense that they represent a use of public property or funds for entirely illegal purposes" (Kaskel v. Impellitteri, 306 NY 73, 79, cert. denied, 347 US 934; see also Korn v. Gulotta, 72 NY2d 363, 371-372). Petitioners, however, have not shown or even alleged that the terms of the settlement or the manner in which they were reached was illegal or fraudulent. Rather, petitioners have essentially accused respondents of incompetence and poor judgment. However true this accusation may be, it is not a proper basis for a Section 51 proceeding.

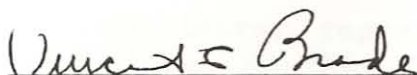
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Furthermore, as petitioners have set forth no grounds to support an Article 78 proceeding or declaratory judgment action seeking to annul the settlement, their request for relief pursuant to these theories of recovery must also be denied.

Finally, although the Court's finding that the petition fails to state a cause of action renders moot the standing issue, the Court notes that Section 51 requires that the proceeding may only be brought by "any person...whose assessment...shall amount to one thousand dollars...". Ms. Lynn, as a real property owner, apparently meets this qualification, but Mr. Barbarite does not.

Accordingly, the motion to dismiss is granted. Mr. Miller shall submit a single order consistent herewith.

Very truly yours,



VINCENT G. BRADLEY
Justice of the Supreme Court

VGB/jeh

