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Decision In Losquadro V. Sea Cliff

Former trustee candidate wins partial summary judgment against the village for unconstitutionality of code

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In a fight that began nearly two years ago when Sea Cliff resident Anthony Losquadro first felt that his rights had been violated concerning a provision of the village code, a motion was granted for partial summary judgment by New York State Supreme Court Justice Steven M. Jaeger deeming the unconstitutionality of a section of the village code.

In the case heard before the New York State Supreme Court, Losquadro filed suit against the village for unlawful search, and to challenge the village code provision allowing the village to enter private property without a warrant. Losquadro is suing the Village of Sea Cliff and Building Superintendent Andrew Lawrence jointly for \$1 million.

According to a statement from Losquadro's attorney, A. Thomas Levin, a partner with the Garden City law firm, Meyer Suozzi English & Klein, P.C., the building department issued numerous violations against Losquadro for construction of a chain link fence, a shed and a dog run. During the court proceedings, Sea Cliff argued that village code allowed them to gain access to the property. However, Levin argued that the village had violated Losquadro's fourth amendment right which protected him from illegal searches.

“Because Section 48-7 of the Code of the Village of Sea Cliff authorizes unconsented and warrantless inspections of residential real property without regard to an emergency situation, it is unconstitutional... based on the foregoing the plaintiff is entitled to partial summary judgment declaring that Section 48-7 of the Code of the Village of Sea Cliff is unconstitutional on its face.”

—Decision by New York State Supreme Court Justice Steven M. Jaeger

Last month, Justice Jaeger ruled in favor of Losquadro, who first brought his lawsuit against the village in September of last year. According to Losquadro, in November 2010, his property was searched by the building superintendent after a neighbor called to complain about a dog run on his property. He says his housekeeper allowed Lawrence to look at the structure in his backyard, and he then followed up with a meeting with the building inspector. After further complaints from the same neighbor about the dog and continued work on his shed, Losquadro received a Stop Work Order for the building of a shed within the dog run on Nov. 12, 2010. Since he was not at home at the time, he claimed that it was a violation of his rights for the building inspector to be on his property without a search warrant.

However, under the village code, Lawrence did have a right to be there. The code states: “The Building Inspector, upon showing proper credentials and in the discharge of his duties, may lawfully enter upon any building, structure or premises at any reasonable hour . . .”

Losquadro claims this was a violation of the fourth amendment rights, and the justice agreed.

The decision states, “Because Section 48-7 of the Code of the Village of Sea Cliff authorizes unconsented and warrantless inspections of residential real property without regard to an emergency situation, it is unconstitutional...based on the foregoing the plaintiff is entitled to partial summary judgment declaring that Section 48-7 of the Code of the Village of Sea Cliff is unconstitutional on its face.”

In February 2011, Losquadro was officially charged with several violations of the village code, and after a trial in Sea Cliff Village Court that began last December, was ordered to pay a fine of \$2,750 in March. He still plans on taking the other elements of this case to trial, when Levin says that Acting Supreme Court Justice Steven M. Jaeger will next be asked to require the village to pay Losquadro's legal bills.

“My client is gratified that the New York State Supreme Court has protected his rights, and the rights of all other village and Long Island residents and will protect them against overzealous enforcement of regulations, even if to do so they need to trample over our nation's constitution,” says Levin.

When asked for a statement about the verdict, Mayor Bruce Kennedy said, “This law was passed in 1979 and was enacted only after it was submitted to the NYS Attorney General's office. The judge's decision was unexpected as most villages have virtually the same law on their books.”

He continued, “The Board of Trustees and I are currently reviewing the various actions available to us with the village attorney as well as the assigned counsel from our insurance company. We intend to take whatever steps are appropriate to attend to the current situation.”