SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

IN THE MATTER OF JACK BAILEY, ET AL, ANDREW DEWOLF (Pro Se), PETITIONER-APPELLANT,	**REPLY TO MOTION** Appellate Division Docket # CA 13-01917
VS.	
VILLAGE OF LYONS BOARD OF TRESTEES RESPONDENT-RESPONDENT	Index No.: 75906-2013

PLEASE TAKE NOTICE, that upon this Reply of Andrew P. DeWolf (Pro Se), and all of the pleadings and proceedings heretofore herein, Petitioner-Appellant Andrew DeWolf asks the court to decline the Motion to Dismiss under the threshold doctrine of mootness because all three of the exemption rules to mootness established in Appellate case law *HEARST v Clyne* apply in this case.

Further, Petitioner-Appellants ask the court to also decline the Respondent's request for an Order extending the time to file Respondent's Reply brief because Respondents failed to give a reasonable reason for the delay or show intent to file within a reasonable time. This is per Appellate 4th Rules of Practice 1000.13 part H and pursuant to CPLR 2004.

Appellant (Pro Se) pleads with the Court to establish that although the controversy of failure to complete statutory duty was resolved by Respondent's obeying the compel order and completing a dissolution plan, the underlying controversy of the case has not been resolved of whether the statutory deadlines of GML 17-A must be complied with in continued good faith, whether there was error in court procedure and findings of fact, and whether the Judiciary has discretion to extend statutory time frames as was done in this case.

I. ARGUMENT IN OPPOSITION TO DISMISSAL ON MOOT GROUNDS: Appellants assert that if the case is ruled Moot due to Respondents complying with the compel order, then according to the rules of *HEARST V. CLYNE (50 NY2d 707 1980), Matter of Gail R.* [*Barron*], 67 AD3d 808, 810, Matter of Jennifer B., 256 A.D.2d; as well as exhibits already in the RECORD, then the appeal should be continued because this case meets the three part exemption rules.

POINT 1: There is a strong likelihood of repetition in future dissolutions between other members of the public and their municipalities because of the involvement of the NYS Conference of Mayors and the involvement of MRB Group-Strategic Municipal Initiatives which consulted in the case and has travelled around NYS giving public presentations regarding these subjects. Evidence in the RECORD supports the assertion that the issues at stake in this case will again come into play in any future village dissolutions.

A: Until 2010, Village dissolutions in NYS were scarce. Since the GML 17-A law was passed and promoted by Governor Cuomo, there has been a resurgence in electors attempting to dissolve their villages. The NYS Conference of Mayors is established state wide and to our knowledge all Villages in NYS belong to NYCOM. NYCOM dues are paid with tax dollars, and NYCOM assists Village Governments with issues that affect them via many methods, including lobbying legislators, arguing before the courts, and educating public officials and promoting village causes. NYCOM Lead Counsel reported NYCOM publically opposed GML 17-A and declared it to be an Arbitrary and Capricious law at our Village sponsored public presentation on September 25, 2012. Thus, for electors seeking to dissolve, NYCOM works against their interests and does so using electors tax dollars.

B: Respondents entered evidence into the record created by NYCOM, and argued to Supreme Court that the 'average' time villages exceeded the statutory deadline of 180 days was an additional 276 days. Reference the RECORD at 131A, 152A, 158A. Thus, if the same "playbook," "advisements," and "consultants" are likely to be used in future village dissolutions, it is also reasonable to assume that future villages may also fail to meet the 180 day statutory deadlines and would end up in court along similar lines with this new law. Declaratory rulings in this case regarding statutory compliance, sustained good faith effort, and court procedures would serve the public good, be in the interest of justice, and address the rights and duties of the parties prior to additional cases, which is one of the beneficial results of declaratory judgments.

C: Our Village Board admitted it pays yearly dues and belongs to NYCOM. Our Board admits it followed NYCOM advisement and published literature in this case, and since NYCOM is a state wide lobbying agency to which all Villages belong, then we can reasonably believe that future dissolution cases will also utilize NYCOM and will also reference the precedent set in this case. NYCOM Lead Counsel, billed an "Expert on Dissolution" was brought in to assist the Village of Lyons in this case and we believe would be utilized in future cases. NYCOM publically argued that strict adherence to GML 17-A deadlines was unnecessary, and that if a good faith effort was given then judicial leniency would be granted. Reference the RECORD page 51A. Further, Respondents acknowledged publically and in their reply to the Court that they utilized NYCOM's Village Handbook on Dissolution as well as a

reported "template" from NYCOM on proceeding through the dissolution process. It is reasonable to believe that NYCOM will again be consulted and utilized in future dissolutions. See RECORD page 54A-94A, and pages 131A.

D: MRB Group-Strategic Municipal Initiatives is a consulting business that claims to specialize in dissolution because its core employees were the former Mayor and CFO of the Village of Seneca Falls. It is established in Albany and state wide. See RECORD page 114A. MRB-SMI has travelled around to different villages in NYS speaking against dissolution and promoting its business plan. See RECORD 122A for one example. Finally, MRB-SMI worked with our dissolution committee and continued during the process to argue GML 17-A was arbitrary and capricious, and that strict adherence to law was unnecessary. Because MRB-SMI has established itself as the consultant of choice in village dissolutions and because of the public statements, it is also reasonable to believe that future dissolution may choose to utilize MRB-SMI to guide them through their dissolutions and thus we believe the underlying controversy will continue into future cases. See RECORD 105A-108A.

E: The controversy of the rights of the parties in instant Appeal may be moot due to the Village Board finally complying 3 months late and under court order on September 30, 2013; but the underlying issues and arguments at controversy are still present, and if the decision stands without an Appellate Review, then case precedent has established the basis of NYCOM and MRB-SMI arguments are valid – and statutory laws can be deviated from, which is our certifying question and controversy still present.

POINT 2: Cases such as this evade court review because by the time they are preserved and perfected, the controversy and relevancy to the parties are moot by Villages complying with compel orders. If the courts had not established the 3 part test noted in *Hearst*, and just dismissed cases where the controversy directly affecting the parties was resolved, then major cases applicable to all citizens would never have been heard, including *Roe V. Wade*. The underlying controversy of our public body ignoring clear statutory deadlines, obtaining leniency before the courts contrary to established case law and clear statutory law, and clarification of court procedures in GML 17-A dissolution cases are still present controversies that are worth preserving and are ripe to be addressed at this time.

A: Cases such as these ARE leveraged in municipal practice and embolden non compliance due to the bias of the parties at controversy. Dismissal on mootness will serve to suppress the safeguards Section 786 because of the difficulties of electors in securing their rights and having to work against tax payer funded entities to even secure those rights. Although

Section 786 affirms Elector Rights, why would electors spend their money, time, and effort to obtain a Compel order if they believe judicial leniency will just allow further transgressions or not hold the line unless good cause was shown and a sustained good faith effort was given?

B: Allowing a mootness dismissal will leave this first test case as precedent. It will also buffer NYCOM and MRB-SMI assertions that GML 17-A deadlines did not have to be followed. We contend that the court has a chance here to reinforce importance of statutory deadlines, reinforce the checks and balances between the three branches, and head off future cases of a similar nature as envisioned in the clear rulings of *MICELI V. STATE FARM*.

C: It is reasonable to expect that if this is declared moot, then all of the underlying arguments in the case will evade review short of drastic issues that arise and claim the court's attention. Because GML 17-A is a newly enacted/modified law, and this is the first test case of it, then "punting" the case would not be in the interest of justice and would allow an evasion of the major controversies at stake – including enforcing the rights of electors and the duty of public officials to comply with relevant laws in good faith effort.

<u>POINT 3: This Appeal is new and NOVEL because this is a new law in 2010 with this being the first test case under the new law, and raises questions for the first time under GML 17-A. The deadlines established in the law are novel, as well as the empowerment of the courts to compel as well as remove duty of public officials. Finally, the clear rights of the electors have been strengthened in a manner not found previously in the GML, creating a novel situation for the lower courts to review and potentially make errors of process and review. Doctrines of Good Faith Effort, Unwilling and Unable, and Good Cause have been statutorily incorporated in an untested way until now. Thus, the Novelty of this case.</u>

A: We cannot find another challenge or review of GML 17-A, nor a clear review of any of the underlying controversies in the case. This is the first challenge under the law and how it's to be applied in practice. Appellants question on appeal whether GML 17-A and CPLR 4, 20, and 78 were correctly applied in this case and assert that they were not. Further, we question whether all facts of the case were properly considered, as we contend they were not.

B: The Supreme Court decision in the case was erroneous as to the facts of the case, failed to clearly articulate the legal basis for the decision granting extension of statutory deadlines, and clearly deviated from the principles established in both *Klosterman V Cuomo* and *Miceli v. State Farm*. Thus, not only are the issues presented new and novel, they also deviate from Appeals Case law and instruction that could be applied, as well as clear rules for discretionary deviation articulated in CPLR 2004. As such, the Court should review this case and weigh in, establishing new case precedent for future

considerations. Such is within the purview of the Appellate Courts and is well worth their time and consideration.

II. ARGUMENT IN RESPONSE TO STATEMENT OF FACTS: The statement of facts presented with this motion are also erroneous, and continue to ignore many of the facts clearly in the RECORD which parties stipulated as to correctness of. Such missing facts are the same facts Appellants contend were missed or ignored by Supreme Court, making the decisions unjust arbitrary and capricious.

The Village of Lyons is in the process of dissolution pursuant to GML 17-A, and is in the final 45 day pending stage where the Dissolution Plan can be forced into another vote to defeat dissolution or will stand as the final Dissolution Plan of the Village of Lyons.

The vote on elector initiated petition occurred November 6, 2012. The Board of Elections certified the vote for dissolution on November 27, 2012. Contrary to above Respondent Statement of facts, the Village Board met December 3, 2012 where they received and acknowledged the receipt of the vote certification results and created a process and deadlines for establishing a consultant and dissolution committee. The Village Board later noted that they were following a template created by NYCOM. The Village board then began implementing the NYCOM advocated process of dissolution, aided by MRB Group-SMI at that time. See Record page 95A-97A.

The Village board then waited 24 days and called a Special Meeting December 27, 2012 which Respondents contend met the requirements of GML 17-A and began the statutory deadlines. Reference the RECORD 98A. Respondents assert that they performed a herculean effort to complete their statutory duties, but failed to explain to the court why they failed for 70 days to start working on the dissolution plan until March 7, 2013 OR why they waited 175 days until June 20, 2013 to submit critical questions to the NYS Comptroller, which was the reason Supreme Court gave for granting time extensions. Reference the RECORD 130A, 148A, and Supreme Court Decision RECORD 3A-5A with conclusion at stake in 1st paragraph on 5A of the RECORD.

The Supreme Court questioned any and all of the efforts of Respondents and was never given a reasonable and satisfactory answer. See the RECORD 162A -164A. Petitioner-Appellants questioned whether the statutory deadlines began with the December 3, 2012 Village Board meeting, but proceeded forth in calculating the 180 statutory deadline using the December 27, 2012 board meeting. Thus, we

calculated the exact deadline was June 25, 2013 not June 27, 2013 and Respondents were fully aware of that time frame.

Actual progress towards completing statutory duties, which is referenced in Respondents statement of facts, did not occur until AFTER Supreme Court intervention in this case. Two hearings occurred on July 23, 2013 and August 20, 2013. On August 26, 2013 Supreme Court Judge Nesbitt ordered Respondents to complete a proposed elector initiated dissolution plan by October 20, 2013.

On September 9, 2013 Appellants filed a Notice of Appeal. The RECORD was settled October 4, 2013. Respondents were served and acknowledge receipt of the Appellant's Brief. The Village of Lyons Board of Trustees approved a dissolution plan on September 30, 2013 which projected significant cost savings for village residents. A public hearing was held October 28, and the final dissolution plan was adopted November 4, 2013.

There is now a significant effort by a pro-village government group named "Save the Village of Lyons" to obtain the 25% threshold of signatures needed to force another vote on dissolution. This entire process has received significant media coverage and engagement by this community and many others. Its decision will have long standing implications to the residents throughout NYS and to those contemplating dissolution in the future.

CONCLUSION: Underlying controversies still exist and are present at a local, regional, and state level, as well as for court procedure in these cases. Even if immediate relevancy to the rights of current petitioners is considered moot, then all three exemptions to mootness grounds exist for continuing the case and doing so would be in the interest of justice and good public policy. The purposes for continuing the appeal are many, but ultimately are to confirm the initial rights of the electors, declare the full obligations of respondents, and confirm the judicial processes to be followed in future dealings with this new law and its implementations.

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Sworn to this ____day of November 2013.