



SUPREME COURT CHAMBERS

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J. SCOTT ODORISI
SUPREME COURT JUSTICE

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July 31, 2013

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RE: Krieger v. City of Rochester
Index #: 13/6121

Dear Counselors:

Pursuant to my comments at Special Term on July 30, 2013, this letter serves as my Decision and Order on the Defendant's CPLR 3211 (a) motion to dismiss. It is the Decision of this Court that Defendant's dismissal motion is denied for the reasons set forth below.

The Defendant first asserts that the Court lacks standing to hear the case as the Plaintiff failed to exhaust his administrative remedies. The Court finds that the Plaintiff need not satisfy this threshold procedural requirement as he is challenging the constitutionality of the law granting the agency with authority to act. See Watergate II Apartments v. Buffalo Sewer Auth., 46 NY2d 52, 57 (1978); Zaro v. Coughlin, 195 AD2d 1003 (4th Dept 1993); Levine v. Traffic & Parking Violation Agency for Nassau County, 29 Misc 3d 1205(A), at *2 (Nassau Co Sup Ct 2010) (holding that an Article 78 petitioner need not exhaust his administrative remedies before going to court to attack the constitutionality of a red light camera program). Here, the Plaintiff presented a multi-faceted facial challenge to procedures and presumptions contained in the red light camera law. As such, the Court rules that the Plaintiff need not be required to exhaust his administrative remedies before challenging that the process itself as constitutionally defective. See Caso v. New York State Pub. High School Athletic Ass'n, Inc., 78 AD2d 41, 46 (4th Dept 1980) (granting standing to an Article 78 petitioner who asserted Federal and State due process claims despite the lack of exhaustion).

The Defendant's reliance on Town of Oyster Bay v. Kirkland, 19 NY3d 1035 (2012) is misplaced as that case required exhaustion of constitutional claims that hinged upon the resolution of factual disputes as opposed to purely questions of law. In the present action, the Plaintiff's claims are purely questions of law without the need for further factual exploration to develop the record. As argued by the Plaintiff at Special Term, his constitutional challenge is not an "as applied" challenge (*ie.* law as applied to a specific

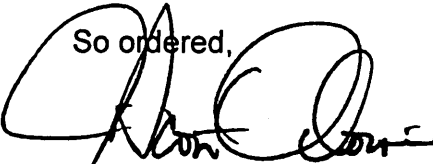
factual scenario), but rather a challenge aimed at the "inherent structure of the law itself." See Pyramid Co. of Auburn v. Chu, 177 AD2d 970 (4th Dept 1991) (finding that it was error to dismiss the case for lack of exhaustion when the subject challenge involved the constitutionality of a statute). As a result, this Court denies Defendant's motion to dismiss for failure to exhaust administrative remedies.

The Defendant's application to dismiss the case due to a failure to state a cause of action also falters. On a CPLR 3211 (a) (7) examination, a pleading is to be afforded a liberal construction and the facts pleaded are presumed true and are accorded every favorable inference in the plaintiff's favor. See CPLR 3026; 511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 NY2d 144, 152 (2002) (finding the complaint to be sufficient); Leon v. Martinez, 84 NY2d 83, 87 (1994) (affirming reinstatement of pleading); Younis v. Martin, 60 AD3d 1373 (4th Dept 2009) (affirming denial of motion to dismiss). Under this deferential standard of review, the Verified Petition, along with its supporting documentation, contains sufficient allegations and reasonable legal arguments to warrant a review on the merits. See Gibraltar Steel v. Gibraltar Metal Proc., 19 AD3d 1141 (4th Dept 2005) (reversing grant of dismissal motion).

Pursuant to CPLR 7804 (f), Defendant is directed to submit a Verified Answer, along with any supporting documentation, within 14 days of service of this Decision and Order with Notice of Entry.

The Court will hear oral argument of the substantive issues on **September 11, 2013**, at **10:00 AM**. See Lucas v. Benjamin, 213 AD2d 1015 (4th Dept 1995). Reply papers, if any, from Plaintiff are due by August 30, 2013.

This constitutes the Decision and Order of the Court.

So ordered,

Honorable J. Scott Odorisi
Supreme Court Justice

cc: File