

At a term of the Supreme Court of the State of New York, held in and for the County of Sullivan, at Monticello, New York, on April 2, 2014

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN**

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**In the Matter of a Proceeding pursuant to
Article 78 of the CPLR**

**CARMEN RUE, Individually, and as a Village
Trustee of the Village of Monticello, JILL WEYER,
Individually, and as a Village Trustee-Elect of the
Village of Monticello, and DOUGLAS SOLOMON,
Individually, and as a Village Trustee-Elect of the
Village of Monticello,**

**DECISION/ORDER
Index # 652-2014
RJI # 52-35278-2014**

Petitioners,

-against-

**GORDON JENKINS, as the Mayor of the
Village of Monticello, ROCHELLE MASSEY,
as Village Trustee of the Village of Monticello,
JAMES MATTHEWS, as Village Trustee of the
Village of Monticello, LARISSA BENNETT,
as Village Trustee of the Village of Monticello,
and ALLAN A. THOMPSON, SR., as Putative
Village Manager of the Village of Monticello,**

Respondents.

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**Present: Hon. Mark M. Meddaugh,
Acting Justice, Supreme Court**

**Appearances: ORSECK LAW OFFICES, PLLC
By: Gerald Orseck, Esq.
Attorneys for the Petitioners
PO Box 469
Liberty, NY 12754**

**Feerick, Lynch, MacCartney, PLLC
By: Brian Nugent, Esq.
Attorney for the Respondents
Jenkins, Massey, Matthews
96 S Broadway
South Nyack, NY 10960**

MEDDAUGH, J.:

The Petitioners have applied to this Court, by Order to Show Cause, dated March 24, 2014, for an order pursuant to Article 78 of the CPLR, in which they seek to enjoin the Respondents from conducting a public hearing to amend Section 45-14 of the Village of Monticello Code, and to enjoin them from executing and approving a contract to appoint Allan A. Thompson as the Village Manager. The Petitioners also seek an award of counsel fees and expenses in accordance with Equal Access to Justice Act (CPLR §8600 *et seq.*).

In support of the application, the Court received the Order to Show Cause, a Verified Petition dated March 22, 2014, the Affirmation of Gerald Orseck, Esq., dated March 24, 2014, and a letter from Petitioner's counsel, dated March 25, 2014. In opposition, the Court received the Affirmation in Opposition of Brain D. Nugent, Esq., dated March 27, 2014, the Affidavit of Janine Gandy, Village Clerk, sworn to March 28, 2014, and a letter from Respondent's counsel, dated March 28, 2014.

The Petitioners assert that, at a Village Board Meeting on March 19, 2014, a public hearing was scheduled to amend Section 45-14 of the Village Code, as amended by Local Law No. 2 of 2010, which section currently provides as follows;

Village Officers and employees may reside outside the Village of Monticello but must reside within the County of Sullivan.

The Petitioners allege that the Respondents, Jenkins, Massey and Matthews, sought to amend the Village Code to permit them to appoint the Respondent, Allan Thompson, as the Village Manager, even though he is not a resident of Sullivan County¹ and, therefore, does not meet the residency requirements of the Village Code, nor of Section 3-300 of Village Law which also

¹Alan Thompson, Sr. has been described in local newspaper articles as the former Mayor of the Village of Spring Valley, and a resident of Rockland County.

requires that village officers must reside in the county where the village is located.

The Petitioners further assert that, at the Board Meeting on March 19, 2014, Respondent Jenkins scheduled a public hearing for March 31, 2014 to amend Section 45-14 of the Village Code to permit Thompson to serve as Village Manager, as a non-resident of Sullivan County, but that Jenkins may attempt to reschedule the meeting for April 3, 2014.

The Petitioners argue that if the amendment to the Village Code is not permitted to be enacted, and if Thompson does not reside in the County of Sullivan, then his appointment would be illegal as would any exercise of his authority in that capacity, including purchasing, hiring of employees, and other functions. The Petitioners further argue that the Respondents, by proceeding or attempting to amend the Village Code to extend the residency requirement to an adjoining county, are about to proceed without or in excess of jurisdiction. Petitioners assert that, because the Village Law 3-300(2) requires that any person appointed to a village office must be a resident of the village, or the county in which the village is located (if permitted by local law, which was done by Local Law #2 of 2010), the attempt to expand residency to an adjoining county establishes grounds for relief under CPLR §7803(2).

The Petitioners also seek to enjoin the Respondents from appointing Thompson as the Village Manager, arguing that, in addition to the fact that Thompson does not meet the residency requirements of the Village Code, the proposed two year contract would guarantee Thompson a salary of \$78,000.00 per year, which would be payable even if Thompson was removed from office by the Village Board which was newly constituted by the Village Elections on March 18, 2014. At the Village elections held on March 18, 2014, the Respondents, Massey and Matthews, were unseated by Petitioners, Weyer and Solomon. It is alleged in the Petition that the terms of Massey and Matthews as Village Trustees expire on April 7, 2014, three days after the public

hearing to amend the Village Code.

The Petitioners assert that the efforts to hire Thompson in advance of the election on March 18, 2014, is an attempt by the Respondents, Jenkins, Massey and Matthews² to perpetuate Jenkins control over Village government for at least two more years.

The Petitioners argue that the proposed contract, which guarantees Thompson's salary for two years, even if he is fired by the new board, is an impermissible penalty upon the authority of the Village Board to control the term of employment of the Village Manager. Section 45-5 of the Village Code provides that the Village Manager shall "hold office during the pleasure of the board."

In response, the attorney for the Respondents, Jenkins, Massey, and Matthews (hereinafter referred to collectively as the "Respondents"), first argues that the Petitioners mischaracterized the substance of the proposed amendment to the Village Code, by asserting that the proposed amendment would allow village officers to live in counties which adjoin Sullivan County. The Petitioner attached a copy of proposed law which is the subject of the public hearing scheduled for April 3, 2014, which provides as follows:

Non-elected Village officers and employees may reside outside the Village of Monticello, but must reside within Sullivan County and must be willing to relocate into the Village of Monticello and/or Sullivan County within six (6) months of employment within the Village of Monticello. Nothing herein shall adversely impact upon the right to continued employment of any existing employee who was employed in reliance on any prior residency local law.

The Respondents also assert that the public hearing regarding the amendment of §45-14 of the Village Code was scheduled for April 3, 2014, and provided a copy of a resolution to that effect, and further assert that the notice of the public hearing was published in accordance with the

²The Respondent, Larissa Bennett, was not present at the time of the board meeting at which the resolution to amend the Village Law was voted on.

Village Code.

The Respondents next argue that the Petitioners, as political opponents of the current majority of the Village Board are seeking to take office prior to the commencement of their term and to attempt to direct and control the actions of the Respondents “by way of a premature, meritless proceeding.” The Respondents claim that, because the amendment to the Village Code does not propose to permit the Village Manager to reside in an adjoining county, the Petitioners’ claim for relief has been rendered moot since their application was predicated on allegations to that effect. The Respondents also argue that, because Section 3-300(2) of the Village Law has been deemed a “special law” and, therefore, the Village may expand the residency requirements, via local law, beyond the County of Sullivan, citing to 1983 N.Y. Op. Atty. Gen (Informal) 1066 (N.Y.A.G.), 1983 WL 167391).

The Respondents argue that the Petitioners have also failed to name a necessary party, the Village of Monticello Board of Trustees, and that individual Trustees may not be enjoined from such actions via an Article 78 proceeding. The Respondents also argue, however, that even if the Village of Monticello is properly named, the Petitioners’ application should be denied since the Village is merely “carrying out its government functions.”

The Respondents further argue that the Petitioners are improperly asking the Court to stop a public hearing, which has been lawfully noticed in accordance with Municipal Home Rule Law §20, rather than presenting their concerns at the public hearing and awaiting the legislative determination following the hearing. The Respondents argue that it is the final action on a local law taken by the Village Board of Trustees as the legislative body of the Village which gives rise to an Article 78.

In response to the Petitioners’ request that the Respondents be enjoined from executing,

or otherwise authorizing an employment agreement with Thompson, Respondent's counsel advises that the contract between the Village of Monticello and Respondent Thompson was executed on March 18, 2014 and that any request to enjoin the execution of the contract has been rendered moot.³ The Respondent provided a copy of a contract entered into between the Village of Monticello and Alan Thompson on March 18, 2014, effective 03-17-14 through 03-16-16, which was executed by Gordon Jenkins, as the Mayor and Village Manager. The contract provided in paragraphs relevant to the instant litigation as follows:

(F) ALLAN THOMPSON shall be paid his salary on a bi-weekly basis, but, notwithstanding the same, this Agreement is for the full amount of \$141,346.20. In the event he is fired prior to the expiration of the term of this agreement, he shall be paid the balance of the full amount of this Agreement.

The Respondents assert that the Petitioners' application under CPLR §7803(3) seeking prohibition should be denied, in that relief in the form of prohibition is an extraordinary remedy which applies only to judicial and quasi-judicial action, but not to legislative, executive or administrative acts. In the case at bar, the Respondents claim that the actions about which the Petitioners are complaining, the execution of a contract and conducting a public hearing are not judicial and quasi-judicial actions.

The Respondents also claim that, once the notice of public hearing was properly noticed, the Village of Monticello has a statutory duty to conduct the hearing, citing Municipal Home Rule Law §10, which cannot be restrained by a TRO (CPLR §6313). The Respondent also argue that the Petitioners have failed to satisfy the requirements for a preliminary injunction, since there is no showing that irreparable harm will result if the proposed amendment to the local law

³Respondents' counsel indicates that he was not aware, when he appeared before Court on March 24, 2014 to address the Petitioners' application for a TRO in their Order to Show Cause, that the contract had been executed. The Court notes, however, that the Respondent, Gordon Jenkins, was also present in Court on that occasion and although he executed the contract in question, he did not attempt to advise the Court via his attorney that he had already executed the contract on behalf of the Village..

is enacted, since the actual proposed amendment does not seek to permit the Village Manager to live outside the County of Sullivan, as alleged by the Petitioner. Furthermore, the Respondents claim that the public hearing would provide the proper forum to consider and review a “valid proposed local law” and that the Petitioners should be waiting until after public hearing to challenge the local law if it is enacted.

The Respondents also claim that “the mere hiring of the ‘putative Village Manager’ would not constitute any irreparable harm to Petitioners.”

Finally, the Respondents oppose the Petitioners application for counsel fees, pursuant to the Equal Access to Justice Act (CPLR §8600, et seq.), arguing that the statute is only applicable to actions against the State of New York. The Respondents also request that sanctions for frivolous conduct be awarded against the Petitioners.

In reply to the Respondents’ papers in opposition, the Petitioners filed an Order to Show Cause seeking to amend its Verified Petition to add Larissa Bennett as a Petitioner, instead of a Respondent, and to add the Board of Trustees of the Village of Monticello as a Respondent.

The Respondent’s attorney objected to the procedure by which the Order to Show Cause was submitted, by letter dated April 1, 2014, but on the return date of the Order to Show Cause on April 2, 2014, did not oppose the application on the merits, other than to question whether adding the Board of Trustees created an ethical problem, because Petitioner Rue is a member of such Board, and Larissa Bennett is seeking to be added as a Petitioner rather than a Respondent.

In response to the Court’s request, Respondent’s counsel also provided a copy of a Resolution, dated March 14, 2014 which authorized the Mayor to execute a contract with Thompson as the Village Manager for a two -year term, commencing on March 17, 2014. The resolution also provided that if Thompson is separated from his employment as Village Manager

for any reason, other than resignation, he shall be paid the balance of the salary for the entire two year term⁴. Petitioner's attorney immediately advised the Court, however, that Rue asserts that the only meeting held on March 14, 2014 was a closed meeting, and that there was no continuation of the meeting at which a resolution to authorize execution of an employment contract with Thompson was approved. The Petitioners strongly dispute that the resolution provided by Respondent was issued by the Village, and Petitioners allege that the resolution may be a forgery. They further argue that there is no public record of any meeting which purportedly took place on March 14, 2014, since the only meeting on that date was a closed meeting.

At the appearance on April 2, 2014, the Petitioner's counsel also advised the Court that, on April 1, 2014, the Village Clerk issued a "Correction Press Release for Immediate Release" which attempted to change the purpose of the public hearing, scheduled for April 3, 2014. The correction press release purportedly changed the purpose of the public hearing from amending the Village Code in accordance with the Resolution of the Village Board of Trustees, dated March 19, 2014, to repealing Chapter 45-14 of the Village Code (which would presumably require that any person appointed to hold a village office would be required to be a resident of the Village of Monticello pursuant to Section 3-300(2) of the Village Law).

Petitioner's counsel also advised that Thompson appeared at work on April 1, 2014, made six new appointments, and ordered a new desk at an expense of \$1,700.00.

⁴The Court notes that the language of the Resolution does not mirror that of the employment contract and it contains only some of the terms of the employment, rather than providing a proposed contract of employment.

CONCLUSIONS OF LAW

Application to Amend Notice of Petition and Petition

By Amended Order to Show Cause, the Petitioners seeks to add the Board of Trustees of the Village of Monticello as a Respondent in this action, and to designate Larissa Bennett as a Petitioner, rather than Respondent.

Whether leave to amend a complaint should be granted rests within the sound discretion of the trial court, although leave should be freely granted if the amendment is not plainly lacking in merit and does not unduly prejudice or surprise the nonmoving party (*Shelton v. New York State Liquor Authority*, 61 A.D.3d 1145, 878 N.Y.S.2d 212 [3 Dept.,2009], *see also*, CPLR §§401, 1003, and CPLR 3105(b)). The Court finds that the Village of Monticello Board of Trustees is a necessary party to this proceeding, without whom the Petitioners cannot be accorded “complete relief” (CPLR 1001[a]), and their request to amend their Petition to add the Board of Trustees of the Village of Monticello as a Respondent, and to designate Larissa Bennett as a Petitioner, rather than a Respondent is hereby granted, and that the service of the Amended Petition shall be effected in accordance with CPLR §311(6).

Application to Enjoin Public Hearing

Section 3-300(2) of the Village Law provides, in pertinent part that:

No person shall be eligible to be appointed to or to hold any other village office who: is not a citizen of the United States; is not at least eighteen years of age; except as may otherwise be provided by law, is not a village resident; and, if eligibility to or holding of such office is subject to regulation under the civil service law or any other law, does not meet the requirements of such law or laws. Notwithstanding any other provisions of law to the contrary; (a) the board of trustees of a village may provide, in lieu of any other residency requirement imposed by law, that any appointed village officer may reside within a county in which the village is wholly or partially situated * * *

Section 3(1) of the Public Officers Law similarly provides that a public officer shall be “a resident of the political subdivision or municipal corporation of the State for which he shall be chosen.”

In accordance with the foregoing provision of Village Law, the Village of Monticello amended Section 45-14 of its Code (Local Law No. 2-2010) to provide that “Village Officers and employees may reside outside the Village of Monticello but must reside within the County of Sullivan.”

At issue in this proceeding is whether the Village of Monticello may now amend its code to provide that non-elected Village officers and employees must show a willingness to become a resident of the Village or the County of Sullivan within six months after the date of employment.

Section Article IX of the New York Constitution provides in Art. IX, § 2[c], [in relevant part:

“In addition to powers granted in the statute of local governments or any other law, (I) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees . . .”

Similarly, Section 10(1)(I) of the Municipal Home Rule Law provides that “every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or

government”.

It has been held, however, that, although a local municipality is empowered to adopt local laws relating to its property, affairs, and government, as long as those laws are not inconsistent with the terms of the Constitution of the State of New York or any “general law” of the State, there is no similar requirement that a local law be consistent with a “special law” enacted by the Legislature and a “special law” may thus be superseded by a validly enacted local law (see, Ricket v. Mahan, 97 A.D.3d 1062, 949 N.Y.S.2d 272 [3 Dept.,2012]; Matter of Gizzo v. Town of Mamaroneck, 36 A.D.3d 162, 165, 824 N.Y.S.2d 366 [2 Dept.,2006]; *lv. denied*, 8 N.Y.3d 806, 832 N.Y.S.2d 488, 864 N.E.2d 618 [2007]).

A “general law” is defined by the Constitution as a “law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages” (N.Y. Const, art. IX, § 3[d][1]; see Municipal Home Rule Law § 2[5]), while a “special law” is defined as a “law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages” (N.Y. Const, art. IX, § 4 [d][4]; see Municipal Home Rule Law § 2[12]).

It has been found that because special residency requirements have been established by special act of the State legislature, as set forth in both Section 3-300 of the Village Law and Section 3(1) of the Public Officers Law, these provisions have rendered these provisions as special, rather than general laws, and a Village may enact a local law providing for residency requirements beyond the county in which the village is located (see, Ricket v. Mahan, supra.)

The Court also notes, however, that where a municipality seeks to enact a local law that supercedes a special state statute, it has been held by the Appellate Division, Third Department that it must do so in explicit terms and specifically identify in the local law the state statute that it

intends to supercede, and the failure to comply with same renders the law invalid (*Ricket v. Mahan*, 82 A.D.3d 1565, 919 N.Y.S.2d 588 [3 Dept.,2011], *citing*, Municipal Home Rule Law § 22[1]; *Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 434, 548 N.Y.S.2d 144[1989]).

In addition, Section 20(4) of the Municipal Home Rule Law requires that, in order to pass a local law, the law must be provided in final form to all members of the legislative body, in this case the Board of Trustees for the Village of Monticello, either (a) upon the desks or tables of the members at least seven calendar days, exclusive of Sunday, prior to its final passage, or (b) mailed to each of them in postpaid properly addressed and securely closed envelopes or wrappers in a post box or post office of the United States post office department within the local government at least ten calendar days, exclusive of Sunday, prior to its final passage. The Affidavit of the Village Clerk, Janine Gandy, summarily provides that she “transmitted” copies of the proposed local law to members of the Board of Trustees on March 27, 2014, without any attempt to establish to the Court that there was proper compliance with the statute. At the court appearance on April 2, 2014, the Petitioner’s counsel advised that the Petitioner Rue acknowledged receiving a copy of the resolution with the proposed amendment to Section 45-14 of the Village Code from her Trustee’s box located in the Village Hall. It would appear, however, that March 27, 2014 is seven days before the public hearing scheduled for April 3, 2014, but only provides six days of notice, if Sunday is excluded in accordance with the Municipal home Rule Law⁵, if the Board acts to pass the law at the public hearing⁶.

In addition, the Village Code requires in Section 37-1, that public notice of the time and

⁵See, N.Y. Gen. Const. Law §20, 1974 N.Y. Op. Comp. 707; 103 N.Y. Jur. 2d Time § 9

⁶The Court notes that the attempt to amend the Notice of Public Hearing on April 1, 2014 for a public hearing on April 3, 2014, clearly fails to provide the requisite statutory notice.

place of the holding of the public hearing on a proposed local law, “shall be given by the Village Clerk by causing the same to be published once in the official newspaper of the village. Such notice shall contain the title of the proposed local law and a brief explanatory statement thereof.” It is argued by the Petitioners that the contents of the notice, which was captioned as press release, failed to comply with the Village Code. The Court notes that the Respondents failed to provide an affidavit of service of such notice of publication. At the Court appearance on April 2, 2014, a copy of the Notice was provided by Petitioner’s counsel, which notice merely indicates that it seeks to amend Chapter 45 section 14 of the Village Code, and without specifying the nature of the amendment.⁷ In light of the “Correction” Press Release, and the inadequate prior notice that was published, there is no way to determine what action is planned for the hearing scheduled for April 3, 2014.

The Respondents have argued that an Article 78 proceeding is not the proper mechanism to challenge a legislative enactment, but the Court finds however that an Article 78 proceeding, brought pursuant to CPLR §7803[2],[3] is appropriate under the posture of the instant case.

Pursuant to CPLR Article 78, a proceeding may be brought for a judgment that a body or officer proceeded in excess of its jurisdiction or that a determination was made in violation of lawful procedure (CPLR § 7803[2] [3]). As a general rule, an Article 78 proceeding may not be brought to challenge the validity of a legislative act (*Matter of Save the Pine Bush v. City of Albany*, 70 N.Y.2d 193, 202, 512 N.E.2d 526, 518 N.Y.S.2d 943 [1987]), and the proper remedy would be a declaratory judgment action (*Board of Educ. of Belmont Cent. School Dist. v. Gootnick*, 49 N.Y.2d 683, 687, 427 N.Y.S.2d 777 [1980]). However, an Article 78 proceeding

⁷The Court notes that the issuance of a Correction to the Notice of Public hearing only two days prior to such hearing is clearly inadequate, and was done without any attempt to comply with the law.

may be available when the challenge is directed not at the substance of an ordinance but at the procedures followed in its enactment (*Matter of Save the Pine Bush v. City of Albany, supra*), and the resolution may be annulled where there has been a violation of a notice by publication requirement (*Krug v. County of Lewis*, 296 A.D.2d 834, 744 N.Y.S.2d 278 [4 Dept.,2002]

Accordingly, the Court finds that, based on the failure of the Respondents to comply with Section 20(4) of the Municipal Home Rule Law, and the provision of Section 22(1) of the Municipal Home Rule Law with regard to enacting a local law that supercedes a special state statute, the Court shall enjoin the public hearing scheduled for April 3, 2014.

Application to Enjoin execution/authorization of Agreement between
the Village of Monticello and Gordon Jenkins

The provisions of the “Agreement as to the Terms and Conditions of Employment” between the Village of Monticello and Allan Thompson (hereinafter the “Agreement”), provides among other things that, in the event Mr. Thompson is fired, prior to the expiration of the term of this agreement, he shall be paid the balance of the full amount of the Agreement (\$141,346.20).

When the instant proceeding was commenced the Petitioners indicated that they were unaware that the Agreement had been executed. The Petitioners assert, by way of this Article 78 proceeding, that the contract in question should be found to be null and void and that all acts in furtherance of the contract should be enjoined.

The Court finds that even if the action was not properly brought pursuant to Article 78, the error is harmless since the Petitioners have stated a valid claim for declaratory relief as a taxpayer's action pursuant to General Municipal Law § 51, which requires that the Petitioners establish their status as taxpayers of the Village, and an official act by the Village which causes waste or injury, imperils the public interest or is calculated to work public injury or to produce

some public mischief (Schulz v. Warren County Bd. of Sup'rs, 179 A.D.2d 118, 581 N.Y.S.2d 885 [3 Dept.,1992]; Leffingwell v. Scutt, 221 A.D. 462, 224 N.Y.S. 168 [3 Dept., 1927]).

The Petitioner's allegations concerning the severance provision in contract are sufficient to allege that the subject contract violated the gift and loan clause of the State Constitution (N.Y. Const., art. VIII, § 1) by guaranteeing payment to Thompson, regardless if he is actually performing work for the Village, and that he will continue to be paid even if he is "fired." Such a provision is analogous to those awarding "liquidated damages." Ordinarily, a liquidated damages provision is an estimate, made by the parties at the time they enter into their agreement, of the extent of the injury that would be sustained as a result of breach of the agreement (Truck Rent-A-Ctr. v. Puritan Farms 2nd, 41 N.Y.2d 420, 393 N.Y.S.2d 365, 361 N.E.2d 1015 [1977]). Where damages flowing from a breach are difficult to ascertain, a provision fixing the damages in advance will be upheld if the amount is a reasonable measure of the anticipated probable harm (City of Rye v. Public Service Mut. Ins. Co., 34 N.Y.2d 470, 358 N.Y.S.2d 391 [1974]), but if the amount fixed is plainly or grossly disproportionate to the probable loss, the provision is a penalty and will not be enforced (Truck Rent-A-Ctr. v. Puritan Farms 2nd, *supra*.) In the case at bar, the contract provision, which provides for full payment of the contract even if Thompson is in breach thereof, bears no reasonable proportion to the probable loss, and the damages clause will be unenforceable as a penalty and damages will be limited to actual damages proven (JMD Holding Corp. v. Congress Financial Corp., 4 N.Y.3d 373, 795 N.Y.S.2d 502 [2005]; BDO Seidman v. Hirshberg, 93 N.Y.2d 382, 712 N.E.2d 1220, 690 N.Y.S.2d 854 [1999]).

It is also undisputed that, at the time that the contract was executed, Thompson was not a resident of the Village of Monticello or of the County of Sullivan, in contravention of Section 45-14 of the Village Code. A residency policy for municipal workers serves "the legitimate

purpose of encouraging city employees to maintain a commitment and involvement with the government which employs them by living within the city” [or in this case the village], and the locality may properly terminate that employment, upon notice and an opportunity to be heard, if it is found that the employee has failed to comply with the residency requirements (Beck–Nichols v. Bianco, 20 N.Y.3d 540, 964 N.Y.S.2d 456 [2013]). The Court of Appeals also found that an employee could not satisfy the requirement by establishing “a mail drop or pied-à-terre in the City” (*id.* at p. 558).

The Court further notes that, despite the requirement in the Village Code (*see*, § 45-6) which requires that the Village Manager attend all Village board meetings, the contract only requires that Thompson “make a good faith effort to attend all Village Board meetings during the term of this agreement.” A municipal contract which does not comply with statutory requirements or local law is invalid and unenforceable (Infrastructure Management Systems, LLC v. County of Nassau, 2 A.D.3d 784, 770 N.Y.S.2d 119 [2 Dept.,2003]).

Finally, the Village Code provides, in Section 45-5, that the Village Manager “shall be appointed by the Board of Trustees and hold office during the pleasure of such Board.” No where in the Village Code does it authorize a contract for a fixed term, and therefore such a contract is invalid and enforceable . The contract also violates that term limits rule, which prohibits one municipal body “from contractually binding [their] successors in areas relating to governance unless specifically authorized by statute or charter provisions to do so” (Matter of Karedes v. Colella, 100 N.Y.2d 45, 50, 760 N.Y.S.2d 84 [2003]), and it has been held that a contract which violates the term limits rule is against public policy City of Newburgh v. McGrane, 82 A.D.3d 1225, 920 N.Y.S.2d 160 [2 Dept., 2011], Edsall v. Wheler, 29 A.D.2d 622, 285 N.Y.S.2d 306 [4^h Dept., 1967]), and shall not be binding upon the successor members of the

municipality (*City of Utica Urban Renewal Agency v. Doyle*, 66 A.D.3d 1495, 885 N.Y.S.2d 801 [4 Dept.,2009]).

The Court shall also note that the validity of the resolution to hire Thompson as the Village Manager is highly contested by the Petitioners, but that based on the Court's determination that the Agreement between the Village of Monticello and Thompson is otherwise invalid and unenforceable, the Court is not required to reach this issue.

Accordingly, based on the foregoing, the Court finds that the Agreement between the Village of Monticello and Allan Thompson, dated March 18, 2014, is found to be invalid and unenforceable and that all acts in furtherance of the contract should be enjoined⁸.

Counsel fees CPLR 8600

In consideration of expedite manner in which this proceeding has been handled by the Court, the Court shall reserve its decision on the issue of counsel fees.

CONCLUSION

WHEREFORE, based on the foregoing, it is hereby

ORDERED that the Petitioners request to amend their Petition to add the Board of Trustees of the Village of Monticello as a Respondent, and to designate Larissa Bennett as a Petitioner, rather than a Respondent is hereby granted, and that the service of the Amended Petition shall be effected in accordance with CPLR §311(6); and it is further

ORDERED that the caption of this proceeding shall be amended as follows:

⁸ The Court notes that, pursuant to Section 4-412(12) of the Village Law, any officer or person who assumes to create a liability or appropriate money or property of the village without authority of law, or assents thereto, is personally liable for such debt, or to the village for such money or property.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN**

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Manager of the Village of Monticello,**

Respondents.

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and it is further

ORDERED that based on the failure of the Respondents to comply with Section 20(4) of the Municipal Home Rule Law, and the provision of Section 22(1) of the Municipal Home Rule Law with regard to enacting a local law that supercedes a special state statute, the Court shall enjoin the public hearing scheduled for April 3, 2014; and it is further


ORDERED that the Agreement between the Village of Monticello and Allan

Thompson, dated March 18, 2014, is found to be invalid and unenforceable and that all acts in furtherance of the contract should be enjoined; and it is further

ORDERED that the Court has reserved decision on the Petitioners' application for counsel fees, based upon the need to expedite the Court's decision in this matter.

This memorandum shall constitute the Decision and Order of this Court. The original Decision and Order, together with the motion papers have been forwarded to the Clerk's office for filing. The filing of this Order does not relieve counsel from the obligation to serve a copy of this order, together with notice of entry, pursuant to CPLR § 5513(a).

Dated: April 2, 2014
Monticello, New York

ENTER: 
HON. MARK M. MEDDAUGH
Acting Supreme Court Justice

Papers Considered:

1. Order to Show Cause, dated March 24, 2014
2. Verified Petition, verified by Carmen Rue on March 22, 2014
3. Affirmation of Gerald Orseck, Esq., dated March 24, 2014
4. Letter from Petitioner's counsel, dated March 24, 2014.
5. Affirmation in Opposition of Brain D. Nugent, Esq., dated March 27, 2014
6. Affidavit of Janine Gandy, Village Clerk, sworn to March 28, 2014
7. Order to Show Cause, dated March 31, 2014
8. Affidavit of Carmen Rue, sworn to March 29, 2014
9. Affirmation of Gerald Orseck, Esq., dated March 24, 2014
10. Letter from Respondent's counsel, dated March 28, 2014.
11. Proposed Verified Amended Petition, jointly verified by Carmen Rue and Larissa Bennett, on March 29, 2014