

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 09-01407

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

IN THE MATTER OF RANDY CLOE, TAMMY CLOE,
JONATHAN EYLES, JANELLE EYLES, KACI JOELS,
STEPHEN JOELS, VONNICE JOELS, JAMES
LAWRENCE, SR., JAMES LAWRENCE, JR., KENNETH
LAWRENCE, SR., KENNETH LAWRENCE, JR.,
WILLIAM MAIN, EDWARD MEREAND, DALE PETRIE,
DAVID PIETROSKI, FRANK ROACH, NICHOLAS
SURDO, JR., NICHOLAS SURDO, SR., BRIAN
WASHBURN AND THOMAS WHITMORE, COLLECTIVELY,
REPRESENTING AT LEAST TEN PERCENT OF THE
MEMBERSHIP OF THE SACKETS HARBOR FIRE
COMPANY, INC., PETITIONERS-APPELLANTS,
ET AL., PETITIONERS,

V

MEMORANDUM AND ORDER

THE ATTORNEY GENERAL FOR THE STATE OF NEW YORK,
A PARTY REQUIRED TO BE NAMED PURSUANT TO
NOT-FOR-PROFIT CORPORATION LAW § 1102(b),
RESPONDENT-RESPONDENT.

SCICCHITANO & PINSKY, PLLC, SYRACUSE (DAVID B. GARWOOD OF COUNSEL),
FOR PETITIONERS-APPELLANTS.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (PAUL GROENWEGEN OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court,
Jefferson County (Hugh A. Gilbert, J.), entered August 28, 2008. The
judgment denied and dismissed the petition for judicial dissolution of
Sackets Harbor Fire Company, Inc.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioners commenced this proceeding seeking
judicial dissolution of the Sackets Harbor Fire Company, Inc. (SHFC).
In opposing the petition, respondent contended, inter alia, that the
proceeding was defective because petitioners failed to name the
Village of Sackets Harbor (Village) as a necessary party. The Board
of Trustees of the Village (Board) thereafter moved to intervene
pursuant to CPLR 401.

Supreme Court "denied and dismissed" the petition on the merits

without a hearing (see generally CPLR 409 [b]; *Matter of Korotun v Laurel Place Homeowner's Assn.*, 6 AD3d 710, 711-712), and without determining whether the Village was a necessary party or deciding the Board's motion to intervene. We agree with respondent that the judgment must be affirmed, but our reasoning differs from that of the court. As respondent correctly contends as an alternative ground for affirmance (see generally *Parochial Bus Sys. v Board of Educ. of City of N.Y.*, 60 NY2d 539, 545-546), the court properly dismissed the petition based on petitioners' failure to name the Village as a necessary party. We conclude that respondent preserved its contention for our review inasmuch as it was raised by respondent in its opposing papers.

The SHFC is a fire corporation that was established by resolution of the Board in 1950, as required by N-PCL 404 (f) (see N-PCL 1402). Petitioners' attempt to distinguish the SHFC from the Village Fire Department is of no avail (see 1994 Ops St Comp No. 94-18), although we note that such distinctions may be important under different circumstances (see 1990 Ops St Comp No. 90-19). Despite the fact that the SHFC was separately incorporated under N-PCL 1402, the Village nevertheless retained control over the SHFC as it would over a fire department or fire company (see N-PCL 1402 [e] [1]; Village Law §§ 10-1000, 10-1008; 1990 Ops St Comp No. 90-19; 1989 Ops St Comp No. 89-15; 1979 Ops St Comp No. 79-568). Thus, the Village was a necessary party to the proceeding and the petition was properly dismissed on that ground alone.

Based on our determination, we see no need to address petitioners' remaining contentions.