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SSD

July 31, 2018

New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

RECEIVED

AUG 02 2018

Re: Town of Delaware v. Ian Leifer
Sullivan County Index No.: 2016/1346

N.Y.S. COURT OF APPEALS

Dear Sir/Madam:

Please accept this letter in support of finding subject matter jurisdiction.

In this action, the Plaintiff-Respondent, Town of Delaware, brought an action for an injunction as against the Defendant-Appellant, Ian Leifer, to stop him from conducting an event on his 65 acre property in the Town of Delaware.

Defendant-Appellant, Ian Leifer, intended to host a three-day Sabbath observance with live music on Friday, Sabbath observance from Friday at sundown to Saturday at sundown during which no music is played, followed by live music Saturday evening and on Sunday. Mr. Leifer calls his event "The Camping Trip".

The Town of Delaware sought to enjoin the event because it considers the event a "theater" as that term is used in the context of the Town's zoning law. Section 220-5 of the Town of Delaware Code defines a "theater" as "Any building, or room or outdoor facility for the presentation of plays, films, other dramatic performances or music". As so defined, "theaters" are completely banned in the Rural RU district as a prohibited use.

Appellant contends that the "theater prohibition" for the Rural RU district violates several rights protected by the First Amendment, including the rights to Free Exercise of Religion, Free Speech, and Freedom of Association. In that regard, Appellant contends that the "theater prohibition" is void for vagueness on its face and as applied; is overbroad and is not narrowly tailored to address a significant governmental interest. Appellant contends that the "theater prohibition" violates the First Amendment and Article I, Sections 3 and 8 of the State Constitution.

The Town of Delaware has identified its significant governmental interest as being the prohibition of live amplified music between dusk and dawn. To accomplish this limited purpose, the Town of Delaware banned all music, during all hours of the day and night, and also banned the non-music day of Sabbath observance. This is why Appellant contends that the "theater prohibition" is not narrowly tailored to address a significant governmental interest, in violation of the First Amendment.

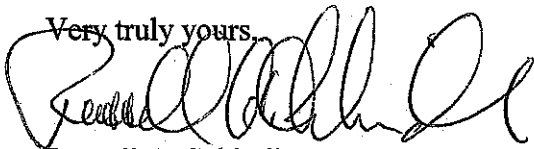
To the extent that Supreme Court enjoined the entire event, rather than enjoining live amplified music from dusk to dawn, Appellant contends that the injunction itself is overbroad in violation of the First Amendment.

In light of the significant First Amendment issues raised herein, it is apparent that the Court of Appeals has subject matter jurisdiction.

Enclosed herewith is a copy of the Record on Appeal, and the briefs filed in the Appellate Division. Also enclosed herewith is an affidavit of service upon Kenneth Klein, Esq., attorney for Plaintiff-Respondent, Town of Delaware.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell A. Schindler". The signature is written in a cursive style with a large initial "R".

Russell A. Schindler, Esq.

RAS/ew

cc: Kenneth Klein, Esq.
Ian Leifer