

**Krause v Lobacz**

2007 NY Slip Op 30396(U)

March 15, 2007

Supreme Court, Suffolk County

Docket Number: 0017174

Judge: Jeffrey Arlen Spinner

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**COPY**

**SUPREME COURT OF THE STATE OF NEW YORK  
IAS PART XXI - COUNTY OF SUFFOLK**

PRESENT:

**HON. JEFFREY ARLEN SPINNER**  
Justice of the Supreme Court

<b>PAUL KRAUSE, PETER SMITH and ARLENE SMITH,</b> as Co-Trustees of the <b>DIANE KRAUSE FAMILY TRUST,</b> and <b>PAUL KRAUSE,</b> individually,  - against -  <b>FRANK LOBACZ,</b>	Plaintiffs,      Defendant.	<b>INDEX NO.: 2006-17174</b>  <b>MOTION SEQ. NO.: 001 - MG</b> <b>ORIG. MOTION DATE: 07/14/06</b>  <b>MOTION SEQ. NO.: 002 - MD</b> <b>ORIG. MOTION DATE: 08/16/06</b>  <b>FINAL SUBMIT DATE: 09/13/06</b>
--	---	--

UPON the following papers numbered 1 to 66 read on these Motions:

- Plaintiffs' Order to Show Cause and Supporting Papers (Pages 1-19 & Exhibits A-B);
- Defendants' Opposition (Pages 20-31 & Exhibits A-P);
- Defendants' Order to Show Cause and Supporting Papers (Pages 32-40 & Exhibits A-G);
- Plaintiffs' Opposition (Pages 41-60 & Exhibits C-L);
- Plaintiffs' Reply to Counterclaims (Pages 61-66);

it is,

**ORDERED**, that the application of Plaintiffs is hereby granted in all respects, and the application of Defendant is hereby denied in all respects.

Plaintiffs move this Court for an Order:

1. Staying, restraining, prohibiting and enjoining Defendant, his employees, agents, servants, attorneys and/or other persons, firms or entities acting for or on his behalf from taking any steps or actions whatsoever to obstruct, impede, impair or otherwise interfere with Plaintiffs' right and/or ability to pass over or use the easement running across, and/or Plaintiffs' boat slip abutting, Defendant's property, located at 1 Saltmeadow Court, Bayport, New York; and
2. Directing that Defendant promptly remove any and all obstructions now in place on the easement, and all objects along Defendant's property that in any manner prevent Plaintiffs' unrestricted use of the easement running across, and/or Plaintiffs' boat slip abutting, Defendant's property, located at 1 Saltmeadow Court, Bayport, New York; and
3. Staying, restraining, prohibiting and enjoining Defendant, his employees, agents, servants, attorneys and/or other persons, firms or entities acting for or on his behalf from taking any steps or actions to interfere with, impair or damage the electric meter and pan installed for the purpose of servicing Plaintiffs' boat slip; or to make any changes or adjustments to the account in connection with the electric service thereto; or to utilize the electric service derived therefrom.

Defendant moves this Court for an Order staying and prohibiting Plaintiffs from docking any vessel larger

than 16.25 feet in the boat slip presently owned by them and appurtenant to the premises known as 5 Salt Meadow Court, Bayport, New York 11705.

It is well settled that, in order to prevail in a request for a preliminary injunction, the moving party must satisfy a three-prong test, demonstrating that:

1. The moving party is likely to suffer irreparable harm in the absence of the relief requested;
2. The moving party is likely to succeed on the merits; and
3. The equities balance in favor of granting the relief requested;

(See, *WT Grant Co v Strogi*, 52 NY2d 496, 438 NYS2d 761 [1981]; *Nesis v Paris international Lighting, Inc*, 184 AD2d 485, 587 NYS2d 152 [1 Dept 1992]; *Albini v Soloru Associates*, 37 AD2d 835, 376 NYS2d 1050 [2 Dept 1971]).

Plaintiffs' Counsel adeptly and convincingly proffers the following legal arguments in support of their request for relief:

- A. The owner of a servient estate may not unreasonably interfere with the rights of the easement holder (See, *Gisondi v Nyack Mews Condominium*, 251 AD2d 371, 673 NYS2d 743 [2 Dpt 1998]);
- B. The owner of the servient estate is obliged to refrain from doing, or allowing to be done, something which results in impairment of the easement, and cannot close or obstruct the easement in such manner as to prevent or interfere with the reasonable use and enjoyment thereof by those entitled thereto (See, *Green v Mann*, 237 AD2d 566, 655 NYS2d 627 [2 Dpt 1997]);
- C. The servient owner may be held liable for damages for obstructing or interfering with the easement, or may be compelled to remove any obstructions that unreasonably interfere with use of the easement by those entitled thereto (See, *Rahabi v Morrison*, 81 AD2d 434, 440 NYS2d 941 [2 Dpt 1981]; *Lockwood v Tibaldi*, 194 AD2d 590, 599 NYS2d 989 [2 Dpt 1993]).

This Court confers with the legal points raised by Plaintiffs' Counsel, and finds that the submissions made in these competing Orders to Show Cause demonstrate that Plaintiffs have met the burden of proving their entitlement to a preliminary injunction, and that Defendant must remove any and all obstructions to Plaintiffs' use and enjoyment of the easement to which they are entitled, as well as returning the account for the electric service to Plaintiff PAUL KRAUSE's name, in order to restore and preserve the *status quo* during the pendency of these matters. Furthermore, this Court finds that Defendant's request for relief does not meet the requirements necessary to demonstrate in order to obtain a preliminary injunction.

For all the reasons stated herein above and in the totality of the papers submitted herein, it is, therefore,

**ORDERED**, that the application of Plaintiffs for an Order:

1. Staying, restraining, prohibiting and enjoining Defendant, his employees, agents, servants, attorneys and/or other persons, firms or entities acting for or on his behalf from taking any steps or actions whatsoever to obstruct, impede, impair or otherwise interfere with Plaintiffs' right and/or ability to pass over or use the easement running across, and/or Plaintiffs' boat slip abutting, Defendant's property, located at 1 Saltmeadow Court, Bayport, New York; and
2. Directing that Defendant promptly remove any and all obstructions now in place on the easement, and all objects along Defendant's property that in any manner prevent Plaintiffs' unrestricted use of the easement running across, and/or Plaintiffs' boat slip abutting, Defendant's property, located at 1 Saltmeadow Court, Bayport, New York; and

3. Staying, restraining, prohibiting and enjoining Defendant, his employees, agents, servants, attorneys and/or other persons, firms or entities acting for or on his behalf from taking any steps or actions to interfere with, impair or damage the electric meter and pan installed for the purpose of servicing Plaintiffs' boat slip; or to make any changes or adjustments to the account in connection with the electric service thereto; or to utilize the electric service derived therefrom;

is hereby granted in all respects, and Defendant and the Long Island Power Authority are further directed to return the account for the electric service to Plaintiff PAUL KRAUSE's name, and Defendant is further directed to take any and all actions necessary in order to restore and preserve the *status quo* during the pendency of these matters; and it is further

**ORDERED**, that the application of Defendant for an Order staying and prohibiting Plaintiffs from docking any vessel larger than 16.25 feet in the boat slip presently owned by them and appurtenant to the premises known as 5 Salt Meadow Court, Bayport, New York 11705, is hereby denied in all respects; and it is further

**ORDERED**, that Counsel for Plaintiffs is hereby directed to serve a copy of this Order, with Notice of Entry, upon Counsel for Defendant and upon the Long Island Power Authority, within 20 days of entry of this Order by the Suffolk County Clerk.

**Dated: Riverhead, New York  
March 15, 2007**



**HON. JEFFREY ARLEN SPINNER, J.S.C.**

FINAL DISPOSITION	✓ NON-FINAL DISPOSITION
✓ SCAN	DO NOT SCAN

**TO:**

Long Tuminello Besso Seligman & Werner, LLC  
*Attorneys for Plaintiffs*  
120 Fourth Avenue  
Bay Shore, New York 11706

Earry V. Pittman, Esq  
*Attorney for Defendant*  
26 Saxon Avenue, PO Box 5647  
Bay Shore, New York 11706-0455