

**Huntingdon Life Sciences, Inc. v Win Animal  
Rights**

2007 NY Slip Op 30750(U)

April 9, 2007

Supreme Court, New York County

Docket Number: 0602313/2006

Judge: Debra A. James

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.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

HUNTINGDON LIFE SCIENCES, INC. and LIFE SCIENCES RESEARCH, INC.  
Plaintiffs,

Index No.: 602313/06

Motion Date: 10/03/06

Motion Seq. No.: 1

Motion Cal. No.: \_\_\_\_\_

- v -

WIN ANIMAL RIGHTS, an unincorporated association, CAMILLE HANKINS, individually and in her capacity as President and/or Treasurer of WIN ANIMAL RIGHTS, GREG NOVARA, a/k/a GREG KELLY, individually and/or as Treasurer of WIN ANIMAL RIGHTS, and DOES 1-100, Inclusive,

Defendants.

The following papers, numbered 1 to 550 were read on this motion / petition for

**FILED**

PAPERS NUMBERED	
1-480	
481-500	
501-550	

Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_

Answering Affidavits - Exhibits \_\_\_\_\_

APR 17 2007

Replying Affidavits - Exhibits \_\_\_\_\_

COUNTY CLERK'S OFFICE  
NEW YORK

Cross-Motion:  Yes  No

Upon the foregoing papers, plaintiffs' motion for a preliminary injunction must be GRANTED in part.

Plaintiff Huntingdon Life Sciences, Inc. ("HLS"), is a corporation organized under the laws of the State of Delaware, with its principal place of business located in New Jersey. Its business is to conduct safety testing, which is primarily government mandated, on pharmaceutical, bio technical and agrochemical products in order to identify risks to humans, animals and the environment. Plaintiff Life Sciences Research, Inc. ("LSR") is a corporation organized under the laws of the

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

State of Maryland, with its principal place of business located in New Jersey. which is a publicly traded holding company that owns 100% of the issued and outstanding common stock of plaintiff HLS.

Defendant Win Animal Rights ("WAR") is an unincorporated voluntary association. Its literature describes WAR as a "national non-profit organization dedicated to eliminating the exploitation and suffering of animals, while promoting and defending...their inherent rights," whose objective is "to engage in a campaign to stop the killing of animals at Huntingdon Life Sciences." Defendants Camille Hankins and Greg Novara are sued individually and as officers or other principals of WAR.

In their Complaint, HLS and LSR seek permanent injunctive relief in connection with their claim that defendants are tortiously interfering with contracts and tortiously interfering with prospective economic advantage. In sum, plaintiffs claim that defendants are using unlawful methods and tactics, including intimidation and invasion of privacy of persons who are plaintiffs' market makers, investors, customers and suppliers through harassing telephone calls to and confrontational demonstrations outside of such individual's personal residences. Plaintiffs allege that the sole objective of campaign is to fatally injure or harm plaintiffs' business.

Plaintiffs move for a preliminary injunction with respect to defendants actions against these third party business relations.

On June 29, 2006, plaintiffs presented a Show Cause Order to Justice Herman Cahn. The proposed Order did not contain a temporary restraining order, and was signed by the judge. Plaintiffs sought to amend such Order to provide for a temporary restraining order, which was preliminarily denied by Judge Cahn,

who for thereafter recused himself. On August 2, 2006, Justice Helen Freedman signed another Show Cause Order, which contained a temporary restraining order that provided that pending the hearing and determination of the motion for a preliminary injunction, with respect to any person or entity having an existing or prospective business or economic relation with plaintiffs, defendants were enjoined from, inter alia, harassing, stalking, intimidating, menacing, by telephone or personally, trespassing on the real property or personal property or coming within front or within twenty feet of any real property known or believed to be lawfully in the possession of, blocking or attempting to block any internet website or other electronic communication system of any such person.

By this Show Cause, plaintiffs seek to extend the temporary restraining order to a preliminary injunction with respect to such third parties.

Defendants argue that plaintiffs' claims and complaint unfairly and improperly attribute the actions of another organization named "Stop Huntingdon Animal Cruelty" ("SHAC") and SHAC USA to defendant WAR and its leaders. They further argue that their demonstrations and campaign constitute speech protected from restraint by the First Amendment of the United States Constitution. Finally, defendants contend that plaintiffs are unable to demonstrate a likelihood of success on the merits, irreparable harm in the absence of injunctive relief, and a weighing of equities in their favor, which are the burden of plaintiffs to show on a motion for equitable preliminary relief. Bingham v. Struve, 184 A.D.2d 85, 88 (1<sup>st</sup> Dept. 1992).

As to the last argument, the affidavit of Mark L. Bibi, general counsel of Huntingdon Life Sciences, Inc., which is the only affidavit of a person with personal knowledge of the facts submitted on plaintiffs' application, relies heavily on his

recounting of the history of SHAC, and what Bibi characterizes as its illegal campaign of terror tactics, which were designed to cause HLS and LRS's demise. Defendants do not contest Bibi's statement that in September 2005, individual leaders of SHAC were indicted for federal crimes, for which they were convicted in May 2006, and await sentencing in September 2006.

Bibi alleges, in his affidavit, that in a pending action against SHAC in the New York State Supreme Court, Westchester County, Justice Colabella has issued a preliminary injunction imposing time, place and manner restrictions upon defendants' protests at his home. He recounts a protest that took place outside of his home on October 12, 2002, as well as additional acts of trespass, and acts of vandalism and threats against he and his family in November 2002, which resulted in the issuance of the injunction.

In support of his position that this court ought to issue an injunction with respect to defendants acts against third parties, Bibi alleges that WAR was organized shortly after the indictments against SHAC's leadership, "to carry on the business of SHAC". Specifically, he alleges that after the 2004 indictments, defendant Hankins began appearing and engaging in demonstrations outside the residence of Andrew Baker, HLS's Chairman and CEO. He attaches a copy of an Order of Protection dated April 26, 2006 that was issued by the New York City Criminal Court against Hankins, which orders Hankins to stay away from Baker, his home, his business, his place of employment.

He also describes other incidents that took place shortly after the indictment of the several SHAC leaders. He cites the Congressional hearing testimony of Stephen Boruchin, a principal of Legacy Trading Company, HLS's largest investor, in which Mr Boruchin described a "campaign of sheer terror" undertaken by SHAC in December 2004 that caused drastic changes

in his family's daily lives.

Finally Bibi affirms that in October 2005, the names, home telephone numbers and e-mail address of executives and other employees of Dalton, Greiner, LLC, another of HLS's market makers, were posted on WAR's website, which also posted personal information for board members of other boards, including a nonprofit children's theater, on which Dalton, Greiner, LLC sits. WAR also carried out demonstrations in front of Kenneth Greiner's home, Dalton, Greiner, LLC's principal.

The balance of Bibi's affidavit describes the alleged economic damage resulting from defendants acts suffered by plaintiffs, including the postponement of the listing of LSR's stock on the New York Stock Exchange, a devaluation and decline in value of LSR stock, the loss of LSR's largest institutional investor, the loss of LSR's market makers and the loss of plaintiffs' customer base.

While the court cannot and does not impute defendants for the prior bad acts of SHAC, a non-party to this action, defendant WAR's own literature admits certain tactics that it has undertaken that constitute tortious acts on the part of defendant WAR and its officers and members themselves.

Such tactics involve the physical pursuit, literally "where they live", and the posting of personal information in a public forum of persons with whom plaintiffs have a business relationship or prospective business relationship.

In Trojan Electric & Machine Company, Inc. V. Heusinger, 162 AD2d 859 (1<sup>st</sup> Dept. 1990), the court stated

The devastating effect of targeted picketing on the quiet enjoyment of a home is beyond doubt and such offensive speech may be resisted when it intrudes upon a captive audience."

The Trojan Electric court also stated that an injunction to redress a private wrong does not constitute one to

suppress public expression where the "words and conduct of the defendant were obviously designed and put into effect for the purpose of intimidating the plaintiff and coercing settlement of a claim by adversely affecting its business venture." 162 AD2d 859 (1<sup>st</sup> Dept.) See also Ansonia Associates Limited Partnership, 253 AD2d 706 (1<sup>st</sup> Dept. 1998).

Plaintiffs have made a prima facie showing of a likelihood of success on the merits of their tort claims of interference with contractual relations and interference with contract or with prospective economic advantage, since plaintiffs' evidence includes purported statements on defendants own website that the demonstrations at the residences of plaintiffs' business relations are aimed at discouraging and disrupting those relations. That defendant Hankins pledges that she no longer wishes to pursue that objective is a concession that such unlawful objective was sought at the time plaintiffs made the application at bar.

As to irreparable harm, that the loss of their largest institutional investor occurred after defendants dissemination of his personal contact information on its website is sufficient to establish irreparable harm should defendants' efforts to disrupt the personal lives of plaintiffs' business relations be allowed to continue pending the resolution of this lawsuit.

While the defendants at bar certainly have a right of

free expression,

their rights must be balanced with the other private and governmental interests involved. Reasonable time, place and manner regulations have been consistently upheld when they are necessary to further significant governmental interest, when they do not regulate the content of speech, and when they leave open alternative means of communication (citations omitted)."

Parkmed Company v Pro-Life Counseling, Inc., 91 AD2d 551, 552 (1<sup>st</sup> Dept. 1982).

The language in the temporary restraining order meets such criteria. Restrictions on defendants' publication of the names and personal home addresses, telephone, fax numbers and email addresses of the principals of plaintiffs' various investing and market making entities do not impinge upon defendants' right of free expression. Restrictions on their calls to the homes of such persons are "to redress a private wrong and not to suppress public expression." Trojan, supra, at p. 860. Finally, the buffer zone limitation strikes a reasonable balance between the defendants' constitutional First Amendment rights and the those of business relations to the quiet enjoyment of their homes.

Accordingly, it is hereby,

ORDERED that plaintiffs' application for a preliminary injunction is GRANTED to the extent that pending the resolution of this action, defendants are hereby enjoined from

(i) harassing, stalking, intimidating, menacing or committing or attempting to commit any act of violence, or making any overt or implicit threat of violence against any employee,

consultant, independent contractor or director of Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc. or any entity known or believed to have business or economic relations with HLS or LSR, or known or believed to have a prospective business relationship with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., including, but not limited to market makers, investors, customers and suppliers, or against any person known or believed to be a family member of any such person;

(ii) trespassing on the real property of, or interfering with, vandalizing or damaging the real or personal property of any employee, consultant, independent contractor or director of Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc. or any entity known or believed to have business or economic relations with Huntingdon Life Sciences, Inc. or Life Science Research, Inc. or known or believed to have a prospective business relationship with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc. including, but not limited to market makers, investors, customers and suppliers, or against any person known or believed to be a family member of any such person action,

(iii) placing or maintaining upon any website, or disseminating electronically over the internet, by e-mail or otherwise, any personal or any other confidential information regarding any employee, consultant, independent contractor or director of Huntingdon Life Sciences, Inc. or Life Sciences

Research, Inc. or any entity known or believed to have business or economic relations with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., or known or believed to have a prospective business relationship with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc. including, but not limited to market makers, investors, customers and suppliers, or against any person known or believed to be a family member of any such person;

(iv) coming in front or within forty-five feet of any real property known or believed to be lawfully in the possession of any employee, consultant, independent contractor or director of Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc. or any entity known or believed to have business or economic relations with HLS or LSR, or known or believed to have a prospective business relationship with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., including, but not limited to market makers, investors, customers and suppliers, or against any person known or believed to be a family member of any such person;

(v) making any phone calls of a threatening nature, or directing, causing, inducing or encouraging others to make any phone calls of a threatening or harassing nature, to the offices of Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., or to the offices of any entity known or believed to have business or economic relations with Huntingdon Life Sciences,

Inc. or Life Sciences Research, Inc. or known or believed to have a prospective business or economic relationship with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., including but not limited to market makers, investors, customers and suppliers;

(vi) blocking or attempting to block the internet website, e-mail, facsimile or telephone lines of any entity known or believed to have business or economic relations with Huntingdon Sciences Research, Inc. or Life Sciences Research, Inc. or known or believed to have a prospective business or economic relationship with Huntingdon Life Sciences, Inc. or Life Sciences, Research, Inc. including but not limited to market makers, investors, customers and suppliers,

(vii) gathering, protesting and/or demonstrating in a group of more than fifteen people outside of the place of business any entity known or believed to have business or economic relations with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., or known or believed to have a prospective business or economic relationship with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., including but not limited to market makers, investors, customers and suppliers; and it is further

ORDERED that pending the disposition of this action, defendants, each of them, and their members, agents, employees, representatives, supporters and all persons acting in concert and

participation with them or with actual notice of this order, be and hereby are required to provide forty-eight (48) hours notice of any intended demonstration, gathering and/or protest outside of the offices of any entity known or believed to have business or economic relations with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., or known or believed to have a prospective business or economic relationship with Huntingdon Life Sciences, Inc. or Life Sciences Research, Inc., including but not limited to market makers, investors, customers and suppliers, to the appropriate police department of the township, municipality or borough that has jurisdiction over such business location, and it is further

ORDERED that the parties shall appear for a preliminary conference on Tuesday, April 24, 2007, 9:30 AM, at IAS Part 59, Room 1254 of 111 Centre Street.

This is the decision and order of the court.

**Dated:** April 9, 2007

ENTER:

*[Signature]*  
 J.S.C.  
**REBRA A. JAMES**  
**FILED** J.S.C.  
 APR 17 2007  
 COUNTY CLERK'S OFFICE  
 NEW YORK