

**Haas v Town of Schodack**

2007 NY Slip Op 33163(U)

October 4, 2007

Supreme Court, Rensselaer County

Docket Number: 0214637/2007

Judge: George B. Ceresia

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF RENSSELAER

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JOHN HAAS,

Plaintiff,

-against-

THE TOWN OF SCHODACK,

Defendant.

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TOWN OF SCHODACK,

Plaintiff,

-against-

JOHN HAAS,

Defendant.

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All Purpose Term

Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

RJI: 41-0281-05 Index No. 214637

Appearances: Andrew J. Jacobs, Esq.  
Attorney For Plaintiff  
573 Columbia Turnpike  
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Hiscock & Barclay  
Attorneys For Defendant  
50 Beaver Street  
Albany, New York 12207  
(Jessica R. Wilcox, Esq., of counsel)

**DECISION/ORDER**

George B. Ceresia, Jr., Justice

The Court, by decision-order dated May 25, 2007, granted, inter alia, a motion for a preliminary injunction by the Town of Schodack (Town), enjoining John Haas (Haas)

“from residing in the subject house unless and until it is deemed habitable by the Town’s building inspectors” (Town of Schodack v Haas, Sup Ct., Rensselaer County, May 25, 2007, Ceresia, J., Index No. 21437/2005). Further, in that order and pursuant to CPLR 2512 (1), the Court directed Haas to submit an affidavit to establish his prospective damages in the event it is finally determined that the Town was not entitled to the preliminary injunction, along with time for the Town to respond to the same.

CPLR 2512 (1) provides:

“Any provision of law authorizing or requiring an undertaking to be given by a party shall be construed as excluding the state, a domestic municipal corporation or a public officer in behalf of the state or of such a corporation. Such parties shall, however, be liable for damages as provided in such provision of law in an amount not exceeding an amount which shall be fixed by the court whenever it would require an undertaking of a private party.”

Thus, while a Town is “exempt from posting an undertaking as a condition of obtaining a provisional remedy such as a preliminary injunction, . . . the Town’s liability for damages by reason of such injunction is limited to ‘an amount not exceeding an amount which shall be fixed by the court . . .’” (Bonded Concrete, Inc. v Town of Saugerties, 42 AD3d 852, 856 [3d Dept 2007], quoting CPLR 2512 [1] [emphasis in original]). Further, “if the trial court does not specify the limit on the municipality’s liability for damages . . . , there can be no liability if it is ultimately determined that plaintiff was not entitled to the injunction” (id.).

Pursuant to this Court’s directive, Haas submitted his affidavit in which he avers that he has and continues to incur damages associated with the preliminary injunction. Appended to and incorporated in his affidavit, Haas submits a list of such damages. That

list indicates daily expenses of (1) \$67.80 for shelter and food for four dogs; (2) \$35 for Haas's hotel accommodations; and (3) \$40 for Haas's meals. As to the other claimed damages, Haas lists: (1) \$6,964 in window repairs; (2) \$3,200 in plumbing repairs; (3) \$1,000 for sheet rock; (4) \$3,000 for loss of refrigerator and frozen food; (5) \$1,930 for kerosene heater and kerosene; and (6) \$50 for a home inspection.

In response, the Town presents evidence, including three affidavits, suggesting that Haas, along with his four dogs, has been living in a camper behind the house subject to the injunction. Thus, the Town argues that any damages regarding shelter for Haas and his animals are negated by this living arrangement. Further, regardless of shelter expenses, the Town contends that any costs for food should not be part of the ultimate damages allowed since Haas would have such costs regardless of his inability to live in the subject house. As to the other damages claimed by Haas, the Town maintains that, since Haas has failed to provide receipts, invoices, estimates or bids substantiating the proposed figures, he, effectively, has not met his burden of proof.

As to damages for Haas's daily living, this Court will include costs for boarding the four dogs and hotel accommodations for Haas but agrees with the Town that any expenses for food are beyond the scope of the injunction. While the Town has submitted some proof that casts doubt whether Haas is living in a hotel and boarding his animals, that proof is not definitive. In any event, the amount set by the Court in this order is the maximum amount of damages Haas could recover "if it is ultimately determined that plaintiff was not entitled to the injunction" (Bonded Concrete, Inc. v Town of Saugerties, *supra* at 856). In the event

of such a recovery action, Haas would still have to prove his actual damages.

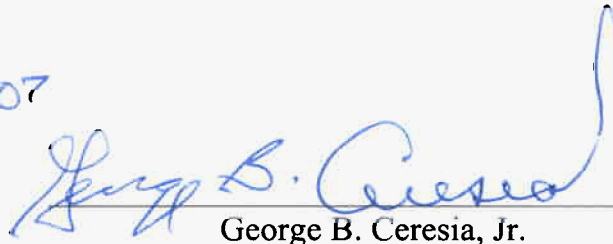
As to the other damages, this Court will not consider these expenses in ascertaining the amount of damages subject to this order. Such expenses are not related to the injunctive relief granted to the Town. In that order, Haas was enjoined "from residing in the subject house unless and until it is deemed habitable by the Town's building inspectors" (Town of Schodack v Haas, Sup Ct., Rensselaer County, May 25, 2007, Ceresia, J., Index No. 21437/2005). The proposed damages concern repairs that Haas apparently claims he had to make due to the Town's actions regarding the potential demolition of the house. In any event, these damages, inter alia, are already the subject of an action brought by Haas against the Town. Thus, Haas is not without a means to seek such damages.

Accordingly, it is

**ORDERED** that the Town's liability under CPLR 2512 (1) is limited to an amount not exceeding the sum of \$102.80 a day as of May 25, 2007.

This shall constitute the decision and order of the Court. All papers are returned to the attorney for John Haas, who is directed to enter this Decision/Order without notice and to serve all attorneys of record with a copy of this Decision/Order with notice of entry.

Dated: OCTOBER 4, 2007  
Troy, New York

  
George B. Ceresia, Jr.  
Supreme Court Justice

Papers Considered:

1. Affidavit of John Haas sworn to June 8, 2007, with accompanying Exhibit A;
2. Affidavit of Jessica R. Wilcox, Esq., sworn to June 21, 2007, with accompanying Exhibits A-B;
3. Affidavit of Nadine Fuda sworn to June 21, 2007, with accompanying Exhibit A.