

Farella v Weldon House Inc.

2010 NY Slip Op 30634(U)

March 26, 2010

Supreme Court, Greene County

Docket Number: 09-843

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

SAM FARELLA, DAVID G. POHLE, and
ASSHA SANGAVI,

Plaintiffs,

-against-

DECISION and ORDER
INDEX NO. 09-843
RJI NO. 19-09-4275

WELDON HOUSE INC., and
DIAMONDBACK MOTORCROSS, INC.,

Case #1

Defendants.

SAM FARELLA, DAVID G. POHLE, and
ASSHA SANGAVI,

Petitioners,

-against-

INDEX NO. 10-254
RJI NO. 19-10-4869

GREENE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY,

Case #2

Respondent.

Supreme Court Greene County All Purpose Term, March 12, 2010
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Plaintiffs/Petitioners (hereinafter “Plaintiffs”) commenced Case #1, a nuisance, declaratory judgment and injunction action, against Weldon House, Inc. (hereinafter “Weldon”) and Diamondback Motorcross, Inc. (hereinafter “Diamondback” and collectively “Defendants”). In Case #1 Plaintiffs seek to prevent Defendants from using a fifty acre parcel of real property in East Durham, New York (hereinafter “Defendants’ site”) for motocross bike racing. By Decision, dated August 13, 2009, the Hon. Daniel Lalor granted Plaintiffs’ motion for a preliminary injunction to enjoin Defendants “from conducting any construction activity (other than installation of storm water control structures if required by a government agency) on any portion of [Defendants’ site].”

Weldon now moves to modify and limit the preliminary injunction, to enjoin only construction activities relative to the motocross racetrack. Weldon seeks to use Greene County Industrial Development Agency (hereinafter “IDA”) funding to renovate existing motel/hotel buildings located on Defendants’ site, but cannot do so with the current preliminary injunction. Plaintiffs oppose the motion.

Closely related, Plaintiffs commenced Case #2¹ seeking to prevent the IDA from providing funding for any construction activities on Defendants’ site, due to the IDA’s alleged failure to comply with New York’s State Environmental Quality Review Act (hereinafter “SEQRA”). Plaintiffs now move, by Order to Show Cause, for a preliminary injunction enjoining the IDA from “[e]ntering into any lease, acquisition or financing for any portion of

¹ Case #1 and Case #2 have not been joined or consolidated. A single Decision and Order is being issued in both cases, and applies equally to both, because of their similarity of issues.

[Defendants' site].”

Because Defendants and the IDA demonstrated their entitlement to a limitation of the preliminary injunction previously issued in Case #1, it is so modified as set forth herein, and Plaintiffs' motion in Case #2 is denied.

“A motion to vacate or modify a preliminary injunction is addressed to the sound discretion of the court and may be granted upon “compelling or changed circumstances that render continuation of the injunction inequitable.” (Thompson v. 76 Corp., 54 AD3d 844 [2d Dept. 2008], quoting Wellbilt Equip. Corp. v Red Eye Grill, 308 AD2d 411 [1st Dept. 2003][internal quotations omitted]). Additionally, “[t]o obtain a preliminary injunction in its favor, plaintiff was required to demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor.” (Green Harbour Homeowners' Ass'n, Inc. v. Ermiger, 67 AD3d 1116, 1117 [3d Dept. 2009][internal quotations omitted], quoting Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 NY3d 839 [2005]; see CPLR 6301). Moreover, “the court may tailor the relief to protect the interests of all parties.” (Paddock Const., Ltd. v. Automated Swimpools, Inc., 130 AD2d 894 [3d Dept. 1987]; *see generally* Conlon v. Concord Pools, Ltd., 170 AD2d 754 [3d Dept. 1991], Bryne v. Bryne, 194 AD2d 640 [2d Dept. 1993]).

On this combined record, the essential facts are undisputed. Several buildings are located on Defendants' site, including two motel structures and a hotel structure. These buildings were in existence long before commencement of either Case #1 or #2. According to Plaintiffs' complaint, the hotel facility was listed “on the National Register of Historic Places in January, 2000.” Moreover, Weldon's allegations that the buildings have continued to be used as

motel/hotel accommodations are undisputed. Weldon notes that the current preliminary injunction prevents them from performing necessary repairs to these aged buildings, even though they are falling into disrepair. Weldon seeks to perform maintenance and repairs on the motel buildings and the historic hotel building, and to use IDA funding for such purpose. The IDA, for its part, alleges that it will not provide Weldon funding for the motocross racetrack project and is statutorily precluded from doing so. (General Municipal Law §854[9]). Rather, both Weldon and the IDA seek authorization to use the IDA funding to repair the existing motel/hotel buildings located on Defendants' site. They both consent to the continuation (or grant) of a preliminary injunction enjoining construction or funding of the motocross racetrack.

At issue in both Case #1 and #2 is a consideration of the equities. (Green Harbour Homeowners' Ass'n, Inc., supra; Thompson, supra). Here, Weldon seeks to modify the existing preliminary injunction to allow them to repair existing structures, one a historical building. At no point in either proceeding do Plaintiffs object to Weldon's current and proposed motel/hotel use. Rather, Plaintiffs solely seek to prevent a motocross racetrack from being built and used on the Defendants' site. As such, continuing the preliminary injunction to prevent Weldon's repair of their motel/hotel buildings would cause great harm to Weldon, with no corresponding benefit to Plaintiffs. Accordingly, Weldon and the IDA have demonstrated that the equities weigh in favor of a modification of the preliminary injunction in Case #1, and that the equities balance in the IDA's favor in Case #2.

Also, Plaintiffs failed to "demonstrate a probability of success on the merits [or a] danger of irreparable injury in the absence of an injunction" in Case #2. (Green Harbour Homeowners' Ass'n, Inc., supra). In Case #2, Plaintiffs challenge the IDA's SEQRA "negative declaration"

alleging illegal segmentation. The IDA, however, issued its “negative declaration” on May 21, 2009. Such position was reiterated in the IDA’s attorney’s letter to plaintiff Pohle, dated July 20, 2009. The letter acknowledged Plaintiffs’ segmentation argument but unambiguously stated that the IDA was not wavering from its “negative declaration” position, even though their ultimate participation in Weldon’s project was not certain. The “negative declaration” along with the July 20, 2009 letter constitute the IDA’s “definitive position on the issue that inflicts an actual, concrete injury.” (Stop-The-Barge ex rel. Gilrain v. Cahill, 1 NY3d 218, 223 [2003], quoting Matter of Essex County v Zagata, 91 NY2d 447 [1998]). As such, the applicable four month statute of limitations began to run, at the latest, on July 20, 2009 and expired well before the commencement of this action on March 4, 2010. (CPLR 217[1]). Because it appears that the statute of limitations expired in Case #2 prior to commencement, Plaintiffs failed to demonstrate their likelihood of success on the merits. Moreover, Plaintiffs failed to demonstrate an “irreparable injury.” At issue in Case #1 and #2 is not Weldon’s motel/hotel use, but rather its motocross race track. As such, the IDA’s funding of Weldon’s renovation of its existing motel/hotel buildings causes Plaintiffs to suffer no injury.

Accordingly, Plaintiffs’ motion for a preliminary injunction in Case #2 is denied, and Weldon’s motion for modification of the preliminary injunction in Case #1 is granted. The preliminary injunction in Case #1 is lifted only to the extent that Weldon is permitted to perform maintenance/repair construction activities on the motel/hotel buildings in existence on the Defendants’ site. Additionally, in Case #2, the IDA shall answer the petition within twenty days of the date of this Decision and Order.

The parties’ remaining contentions have been examined and found to be lacking in merit.

This Decision and Order is being returned to the attorneys for Weldon. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Greene County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: March 26, 2010
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause, dated February 11, 2010, Affidavit of Robert Gagen, dated February 5, 2010, Affidavit of Patricia Handel, dated January 22, 2010, with attached Exhibits A-C.
2. Affirmation of Gerald Bunting, dated February 14, 2010, Affidavit of David Pohle, dated February 14, 2010, with attached Exhibits A-U.
3. Affidavit of Patricia Handel, dated February 19, 2010, with attached Schedules A-C, Affidavit of Robert Gagen, dated February 19, 2010, with attached Exhibits 1-5.
4. Order to Show Cause, dated March 4, 2010, Affirmation of Gerald Bunting, dated March 3, 2010, Letter of Gerald Bunting, dated March 3, 2010, Petition, dated March 3, 2010, Affidavit of David Pohle, dated March 2, 2010, with attached Exhibits A-J.
5. Affidavit of Paul Goldman, dated March 11, 2010, Affidavit of Alexander Mathes, dated March 2, 2010, Affidavit of Patricia Handel, dated March 9, 2010, with attached Exhibits 1-18.
4. Affirmation of Gerald Bunting, dated March 12, 2010, with attached Exhibit K.