

**Matter of Protect The Adirondacks! Inc. v New York  
State Dept. of Env'tl. Conservation**

2013 NY Slip Op 33594(U)

November 21, 2013

Supreme Court, Albany County

Docket Number: 2137-13

Judge: Jr., George B. Ceresia

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

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In The Matter of the Application of  
PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,

For A Judgment Pursuant to Section 5 of Article  
14 of the New York State Constitution and CPLR  
Article 78,

-against-

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION and  
ADIRONDACK PARK AGENCY,

Defendants-Respondents.

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Supreme Court Albany County Article 78 Term  
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding  
RJI # 01-13-ST4541 Index No. 2137-13

Appearances:

Caffry & Flower  
Attorney For Plaintiff-Petitioner  
100 Bay Street  
Glens Falls, NY 12801  
(John W. Caffry, Esq., of Counsel)

Hancock Estabrook, LLP  
Attorneys For New York State Snowmobile Association  
1500 AXA Tower 1  
100 Madison St.  
Syracuse, NY 13202  
(David G. Linger, Eq., of Counsel)

**DECISION/ORDER**

George B. Ceresia, Jr., Justice

The plaintiff-petitioner (hereinafter "petitioner") is a not-for-profit corporation dedicated to the protection and preservation of the lands of the Adirondack Forest Preserve. It has commenced the above-captioned combined action/proceeding to halt construction and development of new snowmobile trails within the Forest Preserve (known as "Class Two"

and/or “Community Connector” Trails). The complaint-petition contains three causes of action. The first, in the form of a plenary action, generally alleges that construction and development of the snowmobile trails violates NY Constitution article XIV, § 1, which requires that the Forest Preserve remain forever wild. The petitioner alleges that a substantial amount of timber is being removed, and that the trails being constructed are not consistent with the wild forest nature of the Forest Preserve, all in violation of NY Constitution article XIV, § 1. The petitioner seeks declaratory relief and a permanent injunction to prevent damage to, and illegal use of the Forest Preserve. In the second cause of action, pursuant to CPLR Article 78, the petitioner objects to the practice of the New York State Department of Environmental Conservation (DEC) of issuing temporary revocable permits (“TRPs”) to towns within the Adirondack Park to allow towns to maintain and groom snowmobile trails with tracked vehicles known as snowcats. It also objects to the practice of issuing an Adopt-A-Natural Resource agreement (“AANR”) to local municipalities and snowmobile clubs to authorize such entities to groom snowmobile trails within the Forest Preserve. It is argued that under the Adirondack Park Master Plan the only motor vehicles allowed within the Forest Preserve are snowmobiles, and that snowcats are not authorized. Petitioner’s third cause of action, again pursuant to CPLR Article 78, alleges that the operation of snowcats and other such vehicles on Forest Preserve trails for purposes of snow grooming violates the rules and regulations of the DEC, specifically 6 NYCRR § 196.1 (a), and that the issuance of TRPs and AANR agreements for such purposes is therefore illegal.

The action/proceeding was commenced by the filing of the summons, notice of petition and complaint on April 15, 2013. The New York State Snowmobile Association (“NYSSA”) has made a motion for an order granting leave to appear as *amicus curiae*, and

“accepting as filed and served the Affidavit of James Rolf<sup>1</sup> dated September 19, 2013, with exhibits, submitted in support of the position of the Defendants- Respondents [ ]”. The petitioner opposes the motion. The respondent takes no position with respect to the matter.

In the absence of a specific rule applicable to the trial courts, the Court is guided by the standard set forth in the § 500.23 of the Rules of the Court of Appeals, entitled “*amicus curiae* relief” which recites at paragraph (a) (4):

“Any nonparty other than the Attorney General seeking to file an amicus brief on an appeal, certified question or motion for leave to appeal must obtain permission by motion.” [ ]

(4) Criteria. Movant shall not present issues not raised before the courts below. A motion for amicus curiae relief shall demonstrate that:

(i) the parties are not capable of a full and adequate presentation and that movant could remedy this deficiency;

(ii) movant could identify law or arguments that might otherwise escape the Court's consideration; or

(iii) the proposed amicus curiae brief otherwise would be of assistance to the Court.” (see 22 NYCRR § 500.23)”

The petitioner argues that NYSSA has failed to satisfy any of the foregoing criteria. The petitioner maintains that the Rolf affidavit improperly raises new issues not before the Court. The Court finds that the affidavit of James Rolf presents a view from a perspective not offered by either the petitioner or the respondent. The affidavit sets forth the opinion of NYSSA with regard to the legality of use of snow grooming vehicles. It provides insight with regard to the trail grooming process, and the practices employed by NYSSA members to minimize deleterious impacts upon the Forest Preserve (both with regard to grooming of

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<sup>1</sup>James Rolf is the “Trail Coordinator” of NYSSA.

and trail usage). It also mentions certain non-environmental factors which it believes should be considered. In the Court's view, the issues raised by Mr. Rolf, may properly be considered under Rule 500.23 (a) (4) (ii) & (iii). For this reason, the Court determines that the motion should be granted, and the affidavit of James Roth considered.

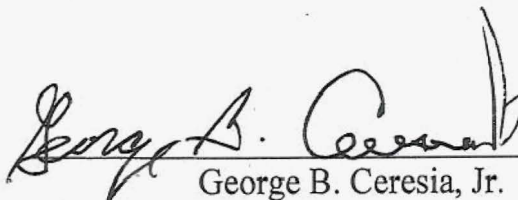
Accordingly, it is

**ORDERED**, that the motion of the New York State Snowmobile Association for permission to appear *amicus curiae*, and to accept as filed and served the affidavit of James Rolf dated September 19, 2013 be and hereby is granted; and it is

**ORDERED**, that the petitioner and respondents shall have twenty (20) days from the date hereof to submit a response to the James Rolf affidavit, if they so choose.

This shall constitute the decision and order of the Court. The original decision/order is returned to the attorney for the New York State Snowmobile Association. All other papers are being delivered to the Supreme Court Clerk for delivery to the County Clerk or directly to the County Clerk for filing. The signing of this decision/order and delivery of this decision/order does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

Dated: November 21, 2013  
Troy, New York



George B. Ceresia, Jr.  
Supreme Court Justice

Papers Considered:

1. Notice of Motion dated September 30, 2013, Supporting Papers and Exhibit
2. Affidavit in Opposition of John W. Caffry, Esq., sworn to October 18, 2013

cc.:

Eric T. Schneiderman  
Attorney General  
State of New York  
The Capitol  
Albany, New York 12224