

40 Reynal Rd. Realty Corp. v City of White Plains

2015 NY Slip Op 32971(U)

September 30, 2015

Supreme Court, Westchester County

Docket Number: 50746/2015

Judge: Charles D. Wood

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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

-----X
40 REYNAL ROAD REALTY CORP.,

Plaintiffs,

-against-

**DECISION & ORDER
Index No. 50746/2015
Sequence Nos. 1-4**

CITY OF WHITE PLAINS, CITY OF WHITE PLAINS DEPT. OF PUBLIC SAFETY, DAVID E. CHONG, AS COMMISSIONER OF THE CITY OF WHITE PLAINS DEPARTMENT OF PUBLIC SAFETY, CITY OF WHITE PLAINS DEPT. OF PUBLIC WORKS, JOSEPH NICOLETTI, AS COMMISSIONER OF THE CITY OF WHITE PLAINS DEPT OF PUBLIC WORKS, COUNTY OF WESTCHESTER DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION, AND JAY, T. PISCO, AS COMMISSIONER OF THE WESTCHESTER COUNTY DEPT. OF PUBLIC WORKS AND TRANSPORTATION,

Defendants.

-----X
WOOD, J.

The following papers were read and considered in connection with motions brought by plaintiff; defendant the City of White Plains (“the City”), together with defendants associated with the City (“City Defendants”); and defendant County of Westchester Department of Public Works & Transportation and Jay T. Pisco, as Commissioner of Public Works/Transportation for the County of Westchester (“the County”):

Seq 1- Plaintiff's motion for Preliminary Injunction

Plaintiff's proposed order to show cause, Counsel's Affirmation, Mule Affidavit, Exhibits.

Seq 2- City's Motion to Dismiss

City's Notice of Motion, Counsel's Affirmation, Nicoletti Affidavit, Exhibits, Johnson Affidavit, Exhibits, Memorandum of Law.

City's counsel's Reply Affirmation in further support of motion to dismiss

Seq 3- County's Motion to Dismiss

County's Notice of Motion, Counsel's Affirmation., Exhibits

County's Counsel's Reply Affirmation in further support of motion to dismiss complaint in lieu of an answer and to response to plaintiff's cross-motion, Exhibit.

Seq 4- Plaintiff's cross-motion to join parties

Plaintiff's Notice of Cross-Motion, Counsel's Affirmation in Opposition to Motions to Dismiss and in Support of Plaintiff's Cross-Motion.

Plaintiff's Counsel's Affirmation in further support of cross-motion.

In May of 2004, plaintiff owner of a .24 acre vacant lot on 40 Reynal Road in White Plains ("the property"), who is also a real estate developer, and speculator was approved by the City to construct a single family house on the 6,850 square foot lot at the property. This site plan approval in September 19, 2006, specified that this property was an environmentally sensitive site, was designated for substantial planning, environmental and design restraints in order to protect and preserve the wetland, stream bed and flood plain associated with the Mamaroneck River located within the property. For the first time in June 2014, plaintiff notified the Commissioners of Public Safety and Public Works of the City of White Plains, of concerns over a stone bridge ("the Footbridge"), which allegedly posed a serious flood threat to the property and nearby lots and was an attractive nuisance to passers by and children.

Plaintiff contends that this alleged dangerous and unsafe condition posed by the Footbridge unreasonably interferes with plaintiff's use and enjoyment of the property, because it attracts pedestrian traffic over the property toward the Footbridge that could quite conceivably cause serious injury to anyone having access.

As a result, this action was commenced against defendants seeking a preliminary injunction: (a) enjoining the City and County defendants from permitting the existence of a dangerous and life-threatening condition constituting a private nuisance caused by the alleged deteriorating condition disrepair and poor structural integrity of the Footbridge adjacent and in close proximity to the property; (b) declaring County Defendants to be required to investigate and survey all water streams and water courses near or affecting the Footbridge and issue permits and perform all other duties to remedy and remove channel obstructions in the Mamaroneck River that may exist on account thereof; (c) declaring that the City be required to investigate repair deconstruct and/or remove the Footbridge and issue permits and perform improvements within the City and its parklands; and (d) awarding plaintiff reasonable attorney's fees, costs and disbursements.

Upon the foregoing papers, the motion is decided as follows:

Preliminary Injunction

Plaintiff seeks a preliminary injunction pursuant to CPLR 6301 and 6311 permanently enjoining defendants from allowing a dangerous and unsafe condition in close proximity to the property, and directing defendants to abate this condition in connection with the Footbridge.

It is well settled that in order to be entitled to a preliminary injunction, the moving party must demonstrate by clear and convincing evidence, the elements of the following three prong test: (1) the likelihood of success on the merits; (2) danger of irreparable harm in the absence of an injunction; and (3) a balance of the equities in favor of granting the injunction (84-85 Gardens Owners Corp. v 84-12 35th Ave. Apt. Corp., 91 AD3d 702 [2d Dept 2012]). A preliminary injunction is a drastic remedy that a court should not grant unless the party seeking such relief can "establish a clear right to that relief under the law and the undisputed facts upon

the moving papers” (Gagnon Bus Co. v Vallo Transportation, Ltd., 13 AD3d 334 [2d Dept 2004]). However, “all that must be shown is the likelihood of success; conclusive proof is not required” (Moy v Umeki, 10 AD3d 604 [2d Dept 2004]). Thus, “while the existence of issues of fact alone will not justify denial of a motion for a preliminary injunction, the motion should not be granted where there are issues that ‘subvert the plaintiff’s likelihood of success on the merits to such a degree that it cannot be said that the plaintiff established a clear right to relief’” (Matter of Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd. 53 AD3d 612 [2d Dept 2008] quoting Milbrandt & Co. v Griffin, 1 AD3d 327, 328 [2d Dept 2003]). “Where facts are in sharp dispute, a temporary injunction will not be granted” Matter of Related Props., Inc. v. Town Bd. of Town/Village of Harrison, 22 A.D.3d 587, 590 [2d Dept 2005]). The determination of whether to grant or deny a preliminary injunction rests in the sound discretion of the trial court (84-85 Gardens Owners Corp. v 84-12 35th Ave. Apt. Corp., 91 AD3d 702 [2d Dept 2012]). “The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual” (Kelley v. Garuda, 36 AD3d 593 [2d Dept 2007]). Additionally, it must be shown that the irreparable injury to be sustained is more burdensome to that party than the harm caused through the imposition of the injunction (citation omitted), and such injury is imminent, not remote or speculative (Copart of Connecticut, Inc. v Long Island Auto Realty, LLC, 42 AD3d 420 [2d Dept 2007]; Village/Town of Mount Kisco v Rene Dubos Center for Human Environments, Inc., 12 AD3d 501 [2d Dept 2004]). In order to obtain a preliminary injunction, the plaintiff must post an undertaking in an amount fixed by the court (CPLR 6312[b]). The amount of the undertaking must be sufficient to pay the damages sustained by defendant if it is determined that the preliminary injunction was improvidently granted (CPLR 6312[b]).

In support of this branch of plaintiff's motion, Plaintiff by its president, Richard Mule, alleges that since plaintiff came into record ownership of the property in 2005, the condition of the footbridge had progressively worsened into its current state of disrepair and decay. That a large section of the old stone bridge structure's span and other portions have collapsed into the Mamaroneck River, thereby artificially raising flood levels and increased flood rises to the premises. Moreover, he has witnessed persons utilizing the City's easement over plaintiff's real property to gain access to the footbridge for recreational purposes, such as hiking. Because plaintiff's northerly neighbor maintains a fence and signage discouraging entry onto her property, many access the footbridge by leaping from plaintiff's property onto its crumbling southeastern wall.

In opposition, the City offers the affidavit of Rod Johnson, presently serving as a Management Associate to the City's Department of Planning. He asserts that the footbridge is not included within or contiguous to the property. As Environmental Officer, he has inspected the property and has observed the site conditions and bridge structure on an annual basis, most recently on November 13, 2014. In his letter to the Planning Board dated November 16, 2014, he stated the following:

"The Environmental Officer visited the site [40 Reynal Road] on November 13, 2014, for the purpose of identifying any changed conditions that would require a re-evaluation of the project and site plan approval in regard to the flood plan and wetland areas. From a visual examination of the site, the basic configuration of the flood plain, location and topography of the on-site slope, the presence of ground cover plants, small trees and the presence of collected leaf duff on the ground has not substantially changed. There does not appear to have been any significant erosion of the flood plain or the sloped hillside areas located within the lot" (Johnson Aff Ex 7)

He further states that while limited portions of the stone wall on the north side of the bridge structure are gone, there has been no significant collapse of the bridge structure

warranting the granting of a preliminary injunction. As observed by Johnson during his November 13, 2014 site inspection, the two archways have not collapsed into the Mamaroneck River, and water continues to flow through them. In addition, there is now an additional, perennial stream bed channel to the east of the bridge structure within City property, and the bridge no longer connects to dry land on that end. This stream channel now allows water to flow continuously around the bridge structure without any apparent obstruction at this time.

Moreover, Jay Fain, a Certified Soil Scientist, who is plaintiff's expert, represented to plaintiff's attorney, that "to the best of my recollection, there has been no substantive change in location of wetlands or wetland hydrology of the above captioned site [the property] between my site visits in 2004 and 2014". (City Ex 6).

Next, the City asserts that the bridge structure complained of and described by plaintiff is, in fact, located on two separate properties--City property and private property. Johnson notes that the bridge is located on City property, and on adjacent private property situated on 42 Reynal Road. The City proffers that Paula Piekos, resident of said property at 42 Reynal Road, has stated on the record at a number of Planning Board public hearings and public meetings on plaintiff's site plan application that her family owns a portion of the bridge structure at issue. Notably, the Piekos Living Trust, the record owner of 42 Reynal Road, has not been named as a party of this proceeding. The City represents that the bridge structure was a prior existing structure, and the City did not design or construct the subject bridge structure and the bridge structure had no stated public purpose. In addition, the bridge structure does not provide legal access from City property to any other City property, park, Reynal Road, or any public pedestrian or vehicular access easement. The City utility easements within the property at the premises serve only drainage and sanitary sewer utilities and are not public, pedestrian or vehicular easements. The bridge structure is located on two separate properties, only one of which the City owns, so it cannot investigate, repair, maintain deconstruct and/or remove that

portion of the bridge structure located on private property at 42 Reynal Road, which would require permission of the owner.

The City also argues that the footbridge is not an attractive nuisance to passerby and children. Contrary to plaintiff's contentions, the City lot is not contiguous to Reynal Road or any public pedestrian or vehicular access easement. The financial burden on plaintiff to maintain and secure its property is not a responsibility that can or should be shifted to the public's expense.

Based upon the submissions and the application of law, and that there is no independent credible evidence that has been a substantial change of the footbridge or the property, plaintiff has failed to prove the likelihood of success on the merits or irreparable injury absent granting of the preliminary injunction and the balancing of the equities in favor of plaintiff. Moreover, the condition of the footbridge has been the subject of contention between plaintiff and the City for some years now, having gone through many public meetings and approvals. Thus, the branch of plaintiff's motion for a preliminary injunction is denied.

Declaratory Judgment

Based upon the foregoing, plaintiff's request for declaratory relief is denied in its entirety pursuant to CPLR 3001, which provides that "the supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. To constitute a "justiciable controversy," there must be a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect (Chanos v MADAC, LLC, 74 AD3d 1007, 1008 [2d Dept 2010]). "The general purpose of the declaratory judgment is to serve some practical end in quieting or

stabilizing an uncertain or disputed jural relation either as to present or prospective obligations” (James v Alderton Dock Yards, 256 NY 298, 305 [1931]). In a declaratory action, however, the rights of the parties must be affirmatively declared either way; a “mere dismissal of the complaint is not an affirmative declaration of the parties’ rights” (Raffone v Town of Islip, 85 AD2d 597 [2d Dept 1981]).

As described below, this action against the County has been dismissed herewith, and thus, it follows, that any request for a declaration that the County be required to investigate and survey all stream and water courses near or affecting the footbridge is denied.

Further, plaintiff’s submissions are insufficient for entitlement to a declaration that the City Defendants be required to investigate, repair the footbridge, insofar as plaintiff has not met its burden to demonstrate that the City has the duty to undertake its repair or that it is a private or public nuisance, or that it is adversely affects plaintiff’s rights as a landowner of the property, which are more appropriately facts to be determined by a jury.

County’s Motion to Dismiss

When a motion to dismiss is premised upon documentary evidence, “such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s allegations, conclusively establishing a defense as a matter of law” (Goshen v. Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]).

On a pre-answer motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction and the plaintiff’s allegations are accepted as true and accorded the benefit of every possible favorable inference (Leon v Martinez, 84 N.Y.2d 83, 87, [1994]). A motion to dismiss a complaint pursuant to CPLR 3211(a)(1) may be granted only if the documentary evidence submitted by the defendant utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]). In order for evidence to qualify as

“documentary,” it must be unambiguous, authentic, and undeniable (Fontanetta v John Doe 1, 73 AD3d 78, 84–86 [2d Dept 2010]). Neither affidavits, deposition testimony, nor letters are considered “documentary evidence” within the intendment of CPLR 3211(a)(1) (Suchmacher v Manana Grocery, 73 AD3d 1017, 900 N.Y.S.2d 686; Fontanetta Granada Condo. III Ass'n v Palomino, 78 AD3d 996, 996 [2d Dept 2010]). [J]udicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case” (Cives Corp., v George A. Fuller Co., Inc., 99 AD3d 713, 714 [2d Dept 2012]).

To support its motion to dismiss this action against it, the County claims that based upon documentation annexed pursuant to CPLR 3211(a)(1), this establishes that the County is not a proper party to this action in that at all relevant times before, on and subsequent to January 12, 2015, the County did not own, operate, control, maintain or have any jurisdiction for the issuance or withholding of construction permits or otherwise over the property, and did not own, operate, control maintain or have any jurisdiction over the footbridge. The County asserts that it does not own, maintain, control or supervise the footbridge.

In further support of its motion to dismiss, the County offers the affidavit of Phillip Abenavoli, PE, (County Ex B) Associate Civil Engineer with the Westchester County Department of Public Works & Transportation for the past 30 years, who attests that the County does not have any ownership of or responsibility over the footbridge.

The County also offers the Affidavit from Jeffrey Dean, (County Ex C) attesting that the subject waterway is not an officially designated County Water Channel pursuant to Article 241 of the Westchester County Code, thus, the County has no jurisdiction over it. Also, the County had provided plaintiff with a large official map kept by the Westchester County

Department of Planning, entitled "County & State Roads & Parks. The County asserts that said Waterway Map shows the delineated official County Water Channels throughout Westchester County, and in turn, that the section of the western branch of the Mamaroneck River at issue is not designated as such. Accordingly, the portion of the Western Branch of the Mamaroneck River at issue here is not part of an officially designated Westchester County Channel Line.

In the County's Reply, it includes a list of channel lines from its website, refers to WCC Section 241.171, and the Commissioner's Order establishing the Channel Line for the Mamaroneck River, recorded April 10, 1961 (Ex A to County's Reply), the map, liber, page numbers and dates of submittal for all maps associated with each Commissioner's Order, the date Order was recorded by the County Clerk as per the Stream Control Law. The County would only have authority to take actions such as inspecting and issuing or withholding permits for channel obstructions within officially designated Water Channels, of which this waterway it claims is not. The County concludes that the County simply owes plaintiff no duty to utilize a discretionary power to create jurisdiction over the Waterway so as to help him resolve his isolated and particularized issue with the City of White Plains.

The County also asserts that plaintiff has not complied with the directives of General Municipal Law 50-e, and has not served a notice of claim regarding the damages alleged or any other claims asserted, and that this action is time barred against County.

Based upon the party's submissions, and the application of law, the County has met its evidentiary burden of proof for dismissal of the instant cause of action, in light of the fact that the County did not own, operate, maintain, control or have jurisdiction over the footbridge or Waterway. The County owes no duty to plaintiff. Here, the documentary evidence including the affidavits were properly considered by the court as it conclusively established that plaintiff had no cause of action against the County. Moreover, the law gives deference to administrative bodies, in that they are exercising their expertise, and acting in good faith.

City's Motion to Dismiss

The City Defendants bring this motion to dismiss on the basis that plaintiff has failed to name necessary parties, namely, the owner of 42 Reynal Road and the DEC, and fails to state a cause of action.

The City Defendants contends that plaintiff has failed to state a cause of action against them, *inter alia*: plaintiff's own retained expert, Jay Fain, confirmed to the Planning Board that the conditions on the property from the time plaintiff purchased the property and applied for site plan approval, and in December of 2014, in relation to wetland and wetland hydrology have not substantially changed; and plaintiff's representations that there have been no changes to the flood plain and conditions on the site, thus negating plaintiff's claim that the bridge structure is causing flooding on the property; and plaintiff is seeking relief which City Defendants cannot provide because the bridge structure is located on two separate properties.

The City Defendants point out that to demolish the footbridge, it is required to obtain permits from the DEC in order to legally demolish the footbridge. The Utility Easement Agreement with the City dated August 4, 2009, which was required by the September 19, 2006 site plan approval, that the City underground utility easements within the property serve only drainage and sanitary sewer utilities and are not public pedestrian or vehicular easements. The City has no obligation regarding the security of private property with no stated public access.

The City Defendants raise that plaintiff's nuisance claims are barred by the doctrine of laches, and that plaintiff comes of court with unclean hands.

It is well settled that pursuant to CPLR (a)(7) "upon a motion to dismiss [for failure to state a cause of action], the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned which,

taken together, manifest any cause of action cognizable at law, then the motion will fail. The court must afford the pleading a liberal construction, accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory”¹ (Esposito v Noto, 90 AD3d 825 [2d Dept 2011]; (Sokol v Leader, 74 AD3d 1180 [2d Dept 2010]); (Bua v Purcell & Ingrao, P.C., 99 AD3d 843, 845 [2d Dept 2012] lv to appeal denied, 20 NY3d 857, 984 NE2d 324 [2013]). However, this does not apply to legal conclusions or factual claims which were either inherently incredible or flatly contradicted by documentary evidence (West Branch Conservation Assn. v County of Rockland, 227 AD2d 547 [2d Dept 1996]). Moreover, if the court considers evidence submitted by a defendant in support of a motion to dismiss under CPLR 3211 (a) (7), a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint,” and if the court does so, “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (Leon v Martinez, 84 NY2d 83, 88 [1994]; Uzzle v Nunzie Ct. Homeowners Ass'n, Inc., 70 AD3d 928, 930 [2d Dept 2010]); Greene v Doral Conference Ctr. Assoc., 18 AD3d 429, 430 [2d Dept 2005]). Thus, affidavits and other evidentiary material may also be considered to “establish conclusively that plaintiff has no cause of action” (Simmons v Edelstein, 32 AD3d 464, 465 [2d Dept 2006]). The court may also consider further affidavits where a meritorious claim lies within inartful pleadings (Lucia v Goldman, 68 AD3d 1064, 1065 [2d Dept 2009]).

More succinctly, under CPLR 3211(a)(7), the standard is whether the pleading states a cause of action, but if the court considers evidentiary material, the criterion then becomes “whether the proponent of the pleading has a cause of action” (Sokol v Leader, 74 AD3d 1180,

¹Internal citations omitted.

1181-82 [2010]). Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus (Dee v Rakower, 112 AD3d 204 [2d Dept 2013]).

Plaintiff's counsel asserts that the Planning Board had repeatedly acknowledged the precarious condition of the footbridge and the lack of fairness in the City's failure to maintain or assume some level of responsibility for its condition. In fact, a board member remarked that the City of White Plains should be held accountable for its poor maintenance. There is a crumbling north wall of the footbridge as the City Defendants admit (Johnson Aff 19-20). Plaintiff cites that a huge section of its easterly span is clearly missing or no longer connects to the City (Van Scoyoc Aff. At 23). Plaintiff also points out that the Planning Board has acknowledged that large sections of the Footbridge have either collapsed into the river or do not fully span its banks.

Further, plaintiff avers that subsection (b) of the Planning Board's Environmental Findings Resolution proves: "Concern has been expressed about the maintenance of an old bridge structure which crosses the Mamaroneck River, a distance of 4 feet outside and downstream from the subject property. This bridge is located on the adjacent property at 42 Reynal Road and the City of White Plains' Ridgeway Nature Trail. Maintenance of this bridge structure is not the responsibility of the applicant or future owners of 40 Reynal Road" (Ex 3, Johnson Aff).

Based upon the parties' arguments, the evidentiary material, including affidavits and reports and from the reading of the complaint, the court finds that plaintiff has a cognizable cause of action against the City Defendants, thus, the motion to dismiss for failure to state a cause of action is denied. Given that the court must accept the facts alleged by plaintiff as true (that the City owns at least part of the footbridge, and have been responsible for its decay and

lack of repairs, causing adverse conditions to plaintiff's property), and must liberally construe the complaint according plaintiff the benefit of every possible favorable inference, the City Defendants have failed to establish that no matter what plaintiff proves, plaintiff does not have a cause of action. This is a long standing dispute between these parties, and the City Defendants have failed to meet their burden.

Joinder of Necessary Party

CPLR 1001(a) states that an individual or entity is a necessary party to litigation "if complete relief is to be accorded between the persons who are parties to the action" or if the entity "might be inequitably affected by a judgment in the action." Joinder is mandatory if the nonparty is subject to the court's jurisdiction (see CPLR 1001[b]; (Swezey v Merrill Lynch, Pierce, Fenner & Smith, Inc., 19 NY3d 543, 550 [2012])).

The City raises that this action should also name the owner of 42 Reynal Road, the neighboring and partial property owner of the footbridge. Plaintiff now brings a motion to join this party to this action.

Based upon the record, the Piekos Trust is a necessary party to declaratory judgment/nuisance action since an adverse judgment against the City by this Court granting plaintiff's request for injunctive relief would affect the Piekos Trust, since it owns one third of that bridge structure located within the property. The City represents that Paula Piekos, a member of the owner Piekos family and resident of 42 Reynal Road, has strongly stated on the record at numerous occasions at the Planning Board public warnings and meeting concerning plaintiff's site plan application and eight extension applications that her family owns a portion of the bridge structure, and her family opposition to any action by the City of White Plains pertaining to the bridge structure the Piekos family in part, owns.

With respect to the New York State Department of Environmental Conservation, plaintiff has not made out a sufficient showing to join this agency.

NOW, THEREFORE for all the reasons set forth above, the court grants the County of Westchester Department of Public Works & Transportation, Jay T. Pisco Commissioner's motion to dismiss (Seq 3) the complaint as against them; denies the motion to dismiss (Seq 2) by the City of White Plains Dept of Public Safety, David E. Chong, as Commissioner of the City of White Plains Department of Public Safety, City of White Plains Dept of Public Works, Joseph Nicoletti, as Commissioner of the City of White Plains Dept of Public Works; denies plaintiff's motion (Seq 1) for declaratory and preliminary injunctive relief (CPLR 3001, 6301, 6312[a]); and grants plaintiff's motion for joinder to the extent that TJ and TI Piekos, as Trustees of the Piekos Living Trust shall be named as a party, and denied as to joinder of the New York State Department of Environmental Conservation; and it is further

ORDERED, that plaintiff to the extent that it seeks leave to file an amended petition naming TJ and TI Piekos, as Trustees of the Piekos Living Trust as a defendant that plaintiff shall within thirty (30) days following entry of this Order in the records of the County Clerk: file an amended petition naming the said trustee as a defendant; and shall serve the amended petition, together a copy of this order and all papers upon which it is based, upon said trustee pursuant to the CPLR; and Plaintiff shall serve the amended petition, together with a copy of this Order, upon all other parties in the same manner as permitted for service of motion papers, and that all defendants must file and serve an answer to the amended petition within thirty (30) days following completion of the above-described service; and it is further


ORDERED, that the County Defendants shall serve a copy of this order with notice of entry upon all parties and the Westchester County Clerk within ten (10) days of entry, and file proof of service on NYSCEF within five (5) days of service; and it is further

ORDERED, that the Clerk enter judgment accordingly; and it is further

ORDERED, that the remaining parties are directed to appear in the Preliminary Conference Part on **Nov. 9th**, 2015 at **9:30am** in Room 811, of the Westchester County Courthouse .

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

Dated: September 30, 2015
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

By: NYSCEF

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