Sandora v City of New York
2017 NY Slip Op 32065(U)
September 21, 2017
Supreme Court, Queens County
Docket Number: 2740/17
Judge: Howard G. Lane

Short Form Order/Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE HOWARD G. LANE** **IAS Part 6**
Justice

LAURA SANDORA, JOSEPH MALDONADO, JUAN CORDERO, SATURNO MERCADO, REV. STEPHEN TYMINSKI, DOROTHY JOHNSON, VISHNU RAMSARA, NANCY SEDA, SATKATU SEECHERAN, ANGEL CONDO, MICHAEL TORRES, CHRISTIAN OREJUELA and AHB ATLANTIC REALTY, LLC,

Petitioners-Plaintiffs,

-against-

CITY OF NEW YORK, BILL DE BLASIO, in his capacity as Mayor of the City of New York, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, and STEVEN BANKS, as Commissioner of New York City Department of Social Services,

Respondents-Defendants.

Index No. 2740/17

Motion Date April 23, 2017

Motion Seq. No. 1

Motion Cal. No. 152

The following papers read on this hybrid Article 78 proceeding and declaratory judgment action by petitioners-plaintiffs for an injunction preliminarily and permanently enjoining respondents from using the real property located at 100-32 Atlantic Avenue, Ozone Park, New York, as a Drop-in Center and Safe Haven or to provide other homeless services until a proper review under the New York State Environmental Quality Review Act (SEQRA) is completed; declaring that the development of the premises as a Drop-in Center and Safe Haven is part of the plan adopted by respondents-defendants for homeless services throughout the City of New York and SERA review should not be segmented by limiting the review to just the premises; preliminarily and permanently enjoining the development of the Premises as a Drop-In Center and Safe Haven as a violation of the Sexual Assault Reform Act of 2000; and awarding costs and disbursements.

	Papers Numbered
Notice of Petition-Verified Petition and Complaint-Exhibits..	1-4
Verified Answer-Affirmation-Exhibits.....	5-9
Reply Affirmation-Exhibits.....	10-13

Upon the foregoing papers the petition is determined as follows:

The within Article 78 proceeding and declaratory judgment action was commenced on March 16, 2017 and seek to enjoin the development of a Drop-in Center and Safe Haven or other facility for homeless individuals, located at the premises known as 100-32 Atlantic Avenue, Ozone Park, New York.

Petitioners-plaintiffs, Laura Sandora and Michael Torres reside in Ozone Park and each has a child attending the High School for Construction Trades, Engineering and Architecture, which is approximately 100 feet from the subject premises. Petitioners Joseph Maldonado, Juan Cordero, Saturno Mercado, Reverend Stephen Tyminski, Dorothy Johnson,Vishnu Ramsara, Nancy Seda, Satkatu Seecheran, Angel Condo, Michael Torres, Christina Orejuela, and AHB Atlantic Realty LLC are either residents or property owners in Ozone Park or Richmond Hill, New York, in close proximity to the subject premises.

The verified petition/complaint alleges that respondent Bill De Blasio, as Mayor of the City of New York, has adopted a Plan[1] to address homelessness in New York City; that said Plan is expressly designed to terminate the use of cluster sites and commercial hotels to accommodate homeless families and individuals, and replace them with additional shelters and homeless facilities; that said Plan expressly provides that 90 new shelters will be created in the next 2 years and that approximately 30 shelters will be expanded; that said Plan also provides that over the next 3 years new Drop-in Centers will be opened and at least 2 of them will be Safe Haven facilities with 220 beds to allow homeless individuals to reside at these facilities; and that as part of this Plan, respondents are about to open a Drop-in Center and Safe Haven at the subject premises, providing services to homeless individuals and temporary beds to permit 150 homeless individuals to reside there for up to 9 months.

It is alleged that the Plan has been adopted and is now being implemented without

[1]The City Plan referred to herein is set forth in 2017 report entitled “Turning the Tide on Homelessness in New York City”.

any required SEQRA review, and therefore should be enjoined until the Mayor's overall plan undertakes the appropriate environmental review. It is further alleged that said Plan "is an integrated comprehensive policy adopted at the discretion of the Mayor to address homelessness throughout the City, and contains specific discretionary decisions on the quantity and quality of homeless shelters to be built or expanded"; that within the last 30 days respondents, or their representatives, have met with community members including some of the petitioners and disclosed that the subject premises is scheduled to be converted from a former factory to a facility to provide homeless services; that a New York not-for-profit corporation Breaking Ground, Inc. has entered into a lease with the owner of the premises; that Breaking Ground and respondent New York City Department of Social Services (DSS) have agreed to the imminent development of the premises as a Drop-in Center and Safe Haven with services to be provided as early as March 16, 2017, and with living facilities to be operational in August or September 2017; that the premises will ultimately have 125 to 150 beds for homeless individuals who can stay up to 9 months; and that there will be 24-hour intake of homeless individuals.

Petitioners allege that due to their close proximity to the subject premises, they would each suffer specific particular harm by the development of the premises as a Drop-in Shelter and Safe Haven, without the required environmental review. Petitioners further allege that SEQRA review should not be limited to the subject premises, but rather should apply to the entire city-wide plan, as to do otherwise would amount to impermissible segmentation, and seek a declaration to that effect.

Petitioners also allege that Laura Sandora and Michael Torres will also be impacted "because registered sex offenders will likely reside at the Premises which is within 1,000 feet of the high school that their children attend". It is alleged that due to the location of the high school, an elementary school, and a public park, and due to the inability to screen the use of the premises by registered sex offenders, there is no way for the respondents to prevent registered sex offenders from violating SARA, and therefore the use of the subject premises to allow homeless individuals to reside there will violate state law and should be enjoined.

Respondents-defendants, in their verified answer, have interposed two objections in point of law and two affirmative defenses, including failure to state a cause of action and that they have complied with any and all SERQA and CEQR requirements. Respondents-defendants assert that they are fully aware of its obligations under SEQRA/CEQR, and have already completed an environmental review for the proposed use of the subject premises, and that is the practice of the Department of Homeless Services (DHS) that all new shelters will also be subject to comprehensive environmental review under SEQRA/CEQR. It is further asserted that on April 10, 2017, DHS sent

written codification of its Fair Share review of Breaking Ground's proposal to operate the subject shelter to the Mayor, the Community Board and the Department of City Planning, consistent with Article 9 of the Fair Share Criteria.

Respondents assert that cumulative environmental review of the City's plan is neither required nor possible. It is asserted that although the City's plan sets a goal of opening 90 high quality shelters, it does not and cannot at present identify specific sites or locations for those future shelters; that most sites/locations have not yet been identified; that the process of identifying sites and plans for all proposed new shelters under this new policy could take years; and that an injunction would significantly delay the opening of new shelters that are ready to open, causing immediate harm to homeless individuals in those neighborhoods and preventing DHS from meeting its legal mandate to provide shelter to all who request it on an immediate basis.

Respondents state that the subject Drop-in Center will serve up to 75 homeless single adults on a daily basis and will operate pursuant to a contract between DHS and a not-for-profit social services provider Common Ground Management Corp., d/b/a Breaking Ground Management. The Drop-in Center will provide housing assistance and placement services, benefits assistance, onsite medical and psychiatric services, substance abuse services, as well as meals, showers and laundry services. As of April 19, 2017, the Drop-in Center opened on a limited basis, accepting a capacity of 10 clients between the hours of 8:00 a.m. to 8:00 p.m.

Respondents also state that the proposed Safe Haven is located adjacent to the Drop-in Center, and will provide shelter and on-site services for 50 single men and women, referred directly by DHS's street outreach program. The site will be able to intake new clients 24 hours a day, 7 days a week, as well as during cold and hot weather emergencies or other circumstances as determined by DHS, and will provide, among other things on-site social, medical and psychiatric services. The Safe Haven is scheduled to open in December 2017.

Respondents further state that Breaking Ground has established a process to ensure that no individuals convicted of a sex offense will be admitted to the facilities; that prospective clients will immediately be screened in order to determine, among other things, whether the individual is registered on any public registry of sex offenders; and that no individuals on such registry will be admitted to either the Drop-in Center or Safe Haven.

The documentary evidence submitted herein includes a copy of the City Plan; an Environmental Assessment Statement and Supplemental Studies dated April 12, 2017;

and a Negative Declaration issued on April 13, 2017.

None of the petitioners have submitted an affidavit in support of the petition. Petitioners' reply papers include a "reply affidavit" by petitioner-plaintiff Laura Sandora, who states that she is a parent of a student who attends the High School for Construction Trades, Engineering and Architecture, and is also a member of the Parents-Teachers' Association (PTA) for said high school and has been authorized to submit said reply affidavit on behalf of the PTA.[2] Ms. Sandora asserts that respondent have not explained how they will be able to screen individuals to determine if they are on a sex offender registry, if the Drop-in Center and Save Haven are open 24 hours; that there is no adequate way to protect from registered sex offenders staying at the facility, even for a short period of time; and that although the Sexual Assault Reform Act of 2000 (SARA) does not prohibit facilities within 1,000 feet of a school, if a facility is going to be utilized by registered sex offenders, it violates the terms of SARA and should be enjoined.

The "purpose of a preliminary injunction is to preserve the status quo pending a trial" and "the remedy is considered a drastic one, which should be used sparingly" *(Trump on the Ocean, LLC v Ash*, 81 AD3d 713 [2nd Dept 2011]). "As a general rule, the decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court." (*Id*.; *Doe v Axelrod*, 73 NY2d 748 [1988]). "In exercising that discretion, the Supreme Court must determine if the moving party has established: (1) a likelihood of success on the merits, (2) irreparable harm in the absence of an injunction, and (3) a balance of the equities in favor of the injunction." (*Trump on the Ocean, LLC v Ash*, 81 AD3d 713, 715 [2nd Dept 2011]; *Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]; *W. T. Grant Co. v Srogi*, 52 NY2d 496[1981]). In order to obtain a permanent injunction, the moving party must establish that there was a "violation of a right presently occurring, or threatened and imminent," that he or she has no adequate remedy at law, that serious and irreparable harm will result absent the injunction, and that the equities are balanced in his or her favor (*Caruso v Bumgarner*, 120 AD3d 1174, 1175 [2d Dept 2014]; *Elow v Svenningsen*, 58 AD3d 674, 675 [2d Dept 2009]).

To the extent that petitioners seek a preliminary injunction, the court cannot grant the ultimate relief that petitioners seek under the guise of a preliminary injunction (*see SportsChannel Am. Assocs. v Natl. Hockey League*, 186 AD2d 417 [1st Dept 1992]). " [A]bsent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief to which he or she would be entitled in a final judgment" (*SHS Baisley, LLC v Res Land, Inc.*, 18 AD3d 727, 728 [2d Dept 2005]; *see Board of Mgrs. of Wharfside Condominium v Nehrich*, 73 AD3d 822, 824[2d Dept

[2]The PTA is not a party to this hybrid Article 78 proceeding and action.

2010]; *Village of Westhampton Beach v Cayea*, 38 AD3d 760, 762 [2d Dept 2007]; *St. Paul Fire & Mar. Ins. Co. v York Claims Serv.*, 308 AD2d 347 [2003]). As such circumstances do not exist here, that branch of the petition which seeks a preliminary injunction, is denied.

Contrary to petitioners-plaintiffs allegations, respondents-defendants are clearly cognizant of their responsibilities under SEQRA/CEQR. The evidence presented establishes that DHS prepared an Environmental Assessment Statement, analyzing the subject Drop-in Center and Safe Haven's potential for significant adverse environmental impacts in various required categories, and concluded that the shelter had no potential for significant adverse environmental impacts. The DHS issued a Negative Declaration on April 12, 2017, thereby concluding the environmental review process. The DHS also considered the Fair Share criteria in reviewing Breaking Ground's proposal to operate the shelter. On April 10, 2017, DHS sent written codification of its fair share review to the Mayor, the Community Board and the Department of City Planning, in compliance with Article 9 of Fair Share Criteria.

Segmentation is defined under SEQRA as "the division of the environmental review of an action such that various activities or stages are addressed under [SEQRA] as though they were independent, unrelated activities, needing individual determinations of significance" (6 NYCRR 617.2 [ag]; *see* 6 NYCRR 617.3 [g] [1]). "Considering only a part or segment of an action is contrary to the intent of " SEQRA (6 NYCRR 617.3 [g] [1]). Even though the subject Drop-in Center and Safe Haven are part of a larger plan to address homelessness in New York City, the DHS, acting as the lead agency, studied only the potential impact of the Ozone Park Drop-in Center and Safe Haven during its SERQA Review. Generally, under SEQRA, the DHS would be obligated to consider the environmental concerns raised by the entire project (*see* 6 NYCRR 617.3 [g] [1]; *Matter of Long Is. Pine Barrens Socy. v Town Bd. of Town of Brookhaven*, 290 AD2d 448, 448-449 [2d Dept 2002]; *Matter of Teich v Buchheit*, 221 AD2d 452, 453-454 [2d Dept 1995]). If, at this stage, the larger project is merely speculative or hypothetical, then the DHS's separate consideration of the Ozone Park Drop-in Center and Safe Haven would not constitute impermissible segmentation (*see Matter of J. Owens Bldg. Co., Inc. v Town of Clarkstown*, 128 AD3d 1067, 1068-1069 [2nd Dept 2015]; *Matter of Village of Tarrytown v Planning Bd. of Vil. of Sleepy Hollow*, 292 AD2d 617, 620-621 [2d Dept 2002]).

Here, the evidence presented establishes that although the City intends to open or build homeless shelters to be overseen by DHS within the next 5 years, and has set a goal of opening 90 high-quality shelters, the City Plan does not identify specific sites or locations for those future shelters, including Drop-in Centers and Safe Havens. The City

Plan envisions that said shelters will be located throughout the City; that they will be sponsored by different not-for profit organizations; that they will be built or renovated by different contractors, and at different times; and that the opening or building of any one shelter will not be dependant upon one another. As there are, at present, no site specific plans for any of the proposed shelters, and no specific plans for the expansion of any existing facility, this court finds that the DHS is not required to undertake cumulative environmental review, based upon a general agency policy that addresses the issue of homelessness. To the extent that petitioners assert that the City Plan may be reviewed pursuant to a generic environmental impact statement, the provisions of 6 NYCRR § 617.10 relied upon by petitioners do not apply to the City of New York (*see* 6 NYCRR § 617.10 [b]).

As the DHS's separate consideration of the Ozone Park Drop-in Center and Safe Haven does not constitute impermissible segmentation (*see Matter of Long Is. Pine Barrens Socy. v Town Bd. of Town of Brookhaven*, 290 AD2d at 448-449), that branch of the petition which seeks a permanent injunction, enjoining the opening and operation of the subject Ozone Park Drop-in Center and Safe Haven until such time as all SEQRA review is completed City-wide, is denied.

To the extent that petitioners assert in their reply memorandum of law that respondents violated SEQRA by failing to undertake an environmental review prior to approving the development of the Ozone Park Drop-in Center and Safe Haven, this allegation was not raised in the verified petition/complaint and petitioners have not moved to amend their pleading. Therefore, as this claim is not properly before the court, it will not be considered.

The Sex Offender Registration Act (SORA) is a registration and notification statute directed at protecting the public from sex offenders, who, upon their release, are assigned a risk level dependent upon whether their risk for reoffending is low (level one), moderate (level two) or high (level three) (*see* Correction Law § 168-l [6] [a]-[c]). The offender is required by law to register as a sex offender for a period that correlates with his particular risk level and designation (*see id*. §§ 168-f and 168-h [1]-[3]), and the statute "authorizes the dissemination of certain information about those individuals to vulnerable populations and the public" (*People v Mingo*, 12 NY3d 563, 570 [2009]). The New York State Division of Criminal Justice Services maintains a subdirectory of level two and three offenders, available at all times on the Internet, which includes, among other information, the offender's name, exact address, photograph, and conviction (*see* Correction Law § 168-q[1]; *People v David W.*, 95 NY2d 130, 137 [2000]; *People v Shim*, 139 AD3d 68, 72 [2d Dept 2016]; see also *People v Parris,* 153 AD3d 68 [2nd Dept 2017]).

The Sexual Assault Reform Act (SARA) amended the Penal Law and the Executive Law to require the imposition of a mandatory condition prohibiting sex offenders placed on probation, conditional release or parole from entering upon school grounds or other facilities where children receive care (school grounds mandatory condition) (L 2000, ch 1). In 2005, the legislature extended the school grounds mandatory condition to sex offenders designated level three pursuant to Correction Law § 168-l (6), and also adopted the broad definition of "school grounds" set forth in Penal Law § 220.00 (14) (a), (b) (*see* L 2005, ch 544; *see also* Executive Law § 259-c [14]). " Courts have interpreted section 220.00 (14) as creating a residency restriction [7] prohibiting certain classes of sex offenders from living within 1,000 feet of a school (*see Terrance v City of Geneva*, 799 F Supp 2d 250, 255 [WD NY 2011]; *People v Blair*, 23 Misc 3d 902, 908 [Albany City Ct 2009]; *People v Oberlander*, 22 Misc 3d 1124[A] [Sup Ct, Rockland County 2009]). The practical effect is that any sex offender who is subject to the school grounds mandatory condition is unable to reside within 1,000 feet of a school or facility as defined in Penal Law § 220.00 (14) (b)" (*People v Diack*, 24 NY3d 674, 680-682 [2015]).

Petitioner's claims based upon SARA are rejected. The location of this facility 1,000 feet of two schools does not constitute a violation of SARA. In addition, there is no evidence that the Ozone Park Drop-in Center and Safe Haven will be operated as a facility for homeless individuals who are registered sex offenders. Finally, petitioner Sandora's claim that there is no adequate way to protect against sex offenders staying at the Drop-in Center and Safe Haven facility, even for a limited period of time, is with out merit. Contrary to petitioner's assertions, the operators of the Ozone Park Drop-in Center and Safe Haven have the ability to screen homeless individuals and obtain information at all times pertaining to registered sex offenders. Therefore, that branch of the petition/complaint that seeks to enjoin the operation of the Drop-in Center and Safe Haven, as a violation of SARA, is denied.

Accordingly, it is hereby ORDERED and ADJUDGED that petitioners-plaintiffs' requests for a preliminary and permanent injunction are denied in their entirety. To the extent that petitioners-plaintiffs seek declaratory judgment, it is the declaration of this court that respondents were entitled to conduct environmental review of the Ozone Park Drop-in Center and Safe Haven pursuant to SEQRA/CEQR, without conducting a City-wide environmental review of the entire plan contained in the 2017 report entitled "Turning the Tide on Homelessness in New York City".

This constitutes the judgment and order of this court.

Dated: September 21, 2017

.....

Howard G. Lane, J.S.C.

[* 9]