

Dinero v Orchard Park Cent. Sch. Dist.
2021 NY Slip Op 31960(U)
April 6, 2021
Supreme Court, Erie County
Docket Number: 804310/2021
Judge: Emilio Colaiacovo
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ROBERT DINERO, on behalf of his minor children and on behalf of all others similarly situated,
Petitioner/Plaintiff,

For Judgment Pursuant to Article 78 of the CPLR, Article XI, § 1 of the New York State Constitution, and/or Article I, § 11 of the New York State Constitution.

Bench Decision

v.

804310/2021

ORCHARD PARK CENTRAL SCHOOL DISTRICT; BOARD OF EDUCATION OF THE ORCHARD PARK CENTRAL SCHOOL DISTRICT; ANDREW M. CUOMO, GOVERNOR OF NEW YORK; NEW YORK STATE DEPARTMENT OF HEALTH; and NEW YORK STATE EDUCATION DEPARTMENT
Respondents/Defendants

Today’s proceeding is limited only to whether the Court should consider granting a Temporary Restraining Order pursuant to CPLR §6301. More specifically, in order to minimize irreparable injury allegedly caused to children by not receiving full time in-person education, Petitioners seek to retrain the Respondent Orchard Park School District from “continuing to only offer students any education program that does not provide such students an option to receive full time instruction for five days each week until a hearing on this matter can be had.”

On a motion for a preliminary injunction or a temporary restraining order, the moving party must demonstrate by clear and convincing evidence a likelihood of ultimate success on the merits, irreparable injury if the injunction were not granted, and a balancing of equities in favor of granting the injunction. Family-Friendly Media, Inc. v. Recorder Television Network, 74 A.D.3d 738 (2nd Dep't. 2010); Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 N.Y.3d 839 (2005); Aetna Ins. Co. v Capasso, 75 N.Y.2d 860 (1990). Respondents raise many defenses to the request for a TRO including, but not limited to, that it is untimely, that Petitioners failed to show irreparable harm or injury, the lack of a notice of claim, and the failure to exhaust administrative remedies. The Attorney General asserts a separate defense that Petitioners failed to name a necessary party, the Orchard Park Teachers Association

While the Court need not address the merits of the petition, or the worthiness of each defense, the Court can dispose of one of the raised defenses. While the Attorney General contends that OPTA is a necessary party - it's not. The teachers union has not made any determination that is being challenged as part of this Article 78 proceeding. The arguments raised that the union would be inequitably affected are without merit as they are merely speculative and overly broad. Therefore, they are not a necessary party and that defense can be easily dispatched.

However, the purpose of a temporary restraining order is to preserve the status quo. Watmet, Inc. v. Robinson, 116 A.D.2d 998 (4th Dept 1986). If the Court granted Petitioner's request for a temporary restraining order, it would be disrupting the status quo. Instead, it is more desirable to address the merits of this petition as questions of fact abound. The Court will proceed as such.

Petitioners request for a temporary restraining order is hereby DENIED. Respondent School District is directed to supply the court and counsel with its written "Plan" no later than April 13, 2021. Respondents Department of Health and Department of Education shall reply, which shall include its approval or disapproval, no later than April 20, 2021. The preliminary injunction hearing shall be held on April 27, 2021 and, if needed, April 28, 2021. A hearing on the merits will be scheduled at a later date. Any verified answers and record shall be filed no less than five (5) days prior to the applicable date.



Hon. Emilio Colaiacovo, J.S.C.

ENTER
Buffalo, NY
April 6, 2021