

**SUPREME COURT - STATE OF NEW YORK
TRIAL/IAS TERM, PART 40 NASSAU COUNTY**

PRESENT:

Honorable James P. McCormack
Acting Justice of the Supreme Court

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**RICHARD A BRUMMEL, JOSHUA DICKER and
DAVID GREENGOLD,**

Petitioner(s),

**For Judgment and an Order pursuant to Article 78,
Section 3001 (Declaratory Judgment) Sections 6311 and
6313 of the Civil Practice Law and Rules**

Index No. 6150-2014

Motion Seq. No.: 001

-against-

**THE TOWN OF NORTH HEMPSTEAD, THE NASSAU
COUNTY LEGISLATURE, NASSAU COUNTY
EXECUTIVE EDWARD P. MANGANO and THE
ROSLYN WATER DISTRICT,**

Respondent(s).

_____x

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X
Affirmation in Opposition.....X

Petitioners move, by Order to Show Cause, for a preliminary injunction enjoining Respondents from, inter alia, “altering in any manner the status quo of the forested and appurtenant areas in Christopher Morley Park, without explicit permission of the Court”. After a hearing on this date, July 2, 2014, Petitioner’s application is denied. That portion of the temporary restraining order, specifically paragraph (d), issued by the Hon. Dana Winslow, dated June 24, 2014, is hereby vacated.

It is well established that to prevail on a motion for preliminary injunctive relief, the movant must clearly demonstrate a likelihood of success on the merits, the prospect of irreparable harm or injury if the relief is withheld and that a balance of the equities favors the movant's position (*see Wheaton/TMW Fourth Ave., LP v. New York City Dept. of Bldgs.*, 65 AD3d 1051 [2d Dept 2009]; *Pearlgreen Corp. v. Yau Chi Chu*, 8 AD3d 460 [2d Dept. 2004]). The decision to grant a preliminary injunction is committed to the sound discretion of the court (*see Tatum v. Newell Funding, LLC.*, 63 AD3d 911 [2d Dept. 2009]; *Bergen–Fine v. Oil Heat Inst., Inc.*, 280 AD2d 504 [2d Dept. 2001]), as the remedy is considered to be a drastic one (*see Doe v. Axelrod*, 73 NY2d 748 [1988]). Consequently, a clear legal right to relief which is plain from undisputed facts must be established (*see Wheaton/TMW Fourth Ave., LP v. New York City Dept. of Bldgs.*, 65 AD3d 1051, *supra*; *Gagnon Bus Co., Inc. v. Vallo Transp., Ltd.*, 13 AD3d 334 [2d Dept 2004]; *Blueberries Gourmet v. Aris Realty*, 255 AD2d 348 [2d Dept 1998]). Petitioners have not met their burden or establishing entitlement to a preliminary injunction or temporary restraining order.

Respondents are directed to submit opposition to the petition, if any, by July 16, 2014. Petitioners are directed to submit a reply to the opposition, if any, by July 28, 2014.

This order shall be stayed for twenty-four hours from July 2, 2014.

This constitutes the Decision and Order of the Court.

Dated: July 2, 2014



Hon. James P. McCormack, A. J. S. C.