Short Form Order

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL IAS/ PART4
NASSAU COUNTY

OPERATION STOMP and TANYA LUKASIK
EUGENE GOLDFARB and EDITH AMERRATA
individually and as members of Operation STOMP,

Petitioners,

-against-

MOTION #001
INDEX#009782/14
MOTION DATE:
October 17th, 2014

NASSAU COUNTY, COUNTY EXECUTIVE
EDWARD P. MANGANO, and NASSAU COUNTY
DEPARTMENT OF PUBLIC WORKS, TRI-STATE
PAVING, LLC, and LASER INDUSTRIES, INC.,

Respondents.

The following papers have been read on this motion:

Order to Show Cause.....1
Verified Answer.....1
Affirmation.....1
Briefs.....
Respondent.....1

Upon the foregoing papers, it is ordered that petitioners' application pursuant to CPLR 6301 and CPLR 7805 for an order granting a preliminary injunction is determined as hereinafter set forth.

The petitioner commenced this special proceeding pursuant to CPLR Article 78. It is alleged that the respondent, County of Nassau, failed to comply with State Environmental Quality Review Act (SEQRA) as it relates to the "Rehabilitation of South Oyster Bay Road." Further, it is asserted that the determination that the project is a Type II under SEQRA was improper.

In support of the application, the petitioner maintains that the determination of a Type II action is incorrect as a matter of law as it does not comply with 6 NYCRR § 617.5 (c).

Further, the petitioners assert irreparable injury, in that, once a tree is removed, it cannot be put back in place. The petitioners also claim a balancing of the equation in their favor.

In opposition, the County maintains the action of the Department of Public Works, were at all times in compliance with applicable law and regulations. It is asserted that the subject actions or specifically covered under 6 NYCRR 617.5 (c) (2) and (4). In addition, it is claimed that none of the respondents' actions were arbitrary and capricious.

"To establish entitlement to a preliminary injunction, a movant must establish (1) a likelihood or probability of success on the merits; (2) irreparable harm in the absence of an injunction, and (3) a balance of the equities in favor of granting the injunction (see CPLR 6301; *Doe v Axelrod*, 73 NY2d 748, 750, 532 NE2d 1272, 536 NYS2d 44; *WT Grant Co.v Srogi*, 52 NY2d 496, 517, 420 NE2d 953, 438 NYS2d 761). 'Irreparable injury, for the purposes of equity, has been held to mean any injury for which money damages are insufficient' (Matter of Walsh v Design Concepts, 221 AD2d 454, 455, 633 NYS2d 579; see *McLaughlin, Piven, Vogel v Nolan & Co.*, 114 AD2d 165, 174, 498 NYS2d 146). Conversely, '[e]conomic loss, which is compensable by money damages, does not constitute irreparable harm' *(EdCia Corp. v McCormack*, 44 AD3d 991, 994, 845 NYS2d 104; see *Neos v Lacy*, 291 AD2d 434, 435, 737 NYS2d 394)." *DiFabio v Omnipoint Communications Inc*. 66 AD3d 635, 887 NYS2d 168 [2nd Dept., 2009].

In the instant matter, the Court finds the determination of the subject project as Type II action to be neither capricious nor arbitrary. The action is specifically listed under 6 NYCRR 617.5 (c)(4) repaving of existing highways not involving the addition of new travel lanes. As a result, the Court finds the petitioners have failed to establish a likelihood or probability of success on the merits.

As such, the petitioners' application pursuant to CPLR 6301 and CPLR 7805 for a preliminary injunction is denied. The previously granted temporary restraining order dated October 10th, 2014 is vacated.

Dated: OCT 2 3 2014

J.S.C.