

Crowley v City of New York

2016 NY Slip Op 32617(U)

December 23, 2016

Supreme Court, Queens County

Docket Number: 710453/16

Judge: Howard G. Lane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE
Justice

IAS PART 6

ELIZABETH S. CROWLEY, in her
capacity as a New York City Council
Member, JOSEPH P. ADDABBO, JR., in
his capacity as a New York State
Senator, MARGARET M. MARKEY, in her
capacity as a New York State
Assembly Member,
Plaintiffs,

Index No. 710453/16
Motion
Date October 5, 2016
Motion
Cal. Nos. 41 and 42
Motion
Seq. Nos. 2 and 3

-against-

THE CITY OF NEW YORK ("NYC"), STEVEN
BANKS, Commissioner of the New York
City Department of Homeless Services
("DHS") and Commissioner of the New
York City Human Resources
Administration/Department of Social
Services ("HRA"),
Defendants.

	<u>Papers Numbered</u>
Order to Show Cause (Seq. No. 2).....	EF 24
Aff. In Support.....	EF 3
Exhibits.....	EF 4-5
Memo of Law in Support.....	EF 6
Addendum.....	EF 8
Aff. In Opp. to Order to Show Cause...	EF 25-26
Exhibits.....	EF 27-32
Affirmation.....	EF 33
Memo of Law in Opposition.....	EF 34
Notice of Motion (Seq. No. 3).....	EF 13
Aff. In Support.....	EF 14-15
Exhibits.....	EF 16-18
Memo of Law.....	EF 19
Aff.....	EF 33
Memo of Law in Opp. To Cross Motion and in Support of Motion.....	EF 34
Aff. In Reply.....	EF 35-36

Upon the foregoing papers it is ordered that the Order to Show Cause by plaintiffs, Elizabeth Crowley, in her capacity as a New York City Council Member, Joseph P. Addabbo Jr., in his capacity as a New York State Senator, Margaret M. Markey, in her capacity as New York State Assembly Member seeking a preliminary injunction against defendants, The City of New York, Steven Banks, Commissioner of the New York City Department of Homeless Services and Commissioner of the Human Resources Administration/Department of Social Services, enjoining and restraining defendants from taking any action to convert the Holiday Inn Express located at 59-40 55th Road, Maspeth, New York 11378 into a homeless shelter for adult families in violation of the New York City Administrative Code, specifically § 21-124 which section prescribes that cooking facilities be contained in each family unit and motion by defendants, The City of New York, Steven Banks, Commissioner of the New York City Department of Homeless Services and Commissioner of the Human Resources Administration/Department of Social Services, for an order dismissing the plaintiffs' Complaint pursuant to CPLR 3211(a)(5) and (7) on the grounds that plaintiffs lack standing and capacity to proceed and fail to assert a cognizable claim, are hereby joined solely for purposes of disposition of the instant motions and are hereby decided as follows:

Plaintiffs' action is based upon § 21-124 of the New York City Administrative Code, which is entitled "Prohibiting the use of Tier I shelters." The first three subsections state:

- a. The city shall not establish henceforth any Tier I shelters as defined in 18 NYCRR 900.2 through 900.18. After September 30, 1991, the City of New York shall not operate any Tier I shelters.
- b. No homeless family shelter shall be established which does not provide a bathroom, a refrigerator and cooking facilities and an adequate sleeping area within each unit within the shelter and which otherwise complies with state and local laws. All Tier II shelter units shall be such that they may be converted to be used for permanent housing with a minimum of structural change.
- c. The requirements of this subdivision shall not apply in cases where the provisions of § 21-121(3) are invoked.

The Complaint alleges that defendant DHS is planning to convert a newly constructed Holiday Inn Express hotel, located at

59-40 55th Road, Maspeth, New York into a homeless shelter for adult families and that the hotel rooms "do not contain equipment that would constitute cooking facilities". (§13 of the Complaint). Plaintiffs further allege "[u]se of hotel rooms as homeless family shelters without cooking facilities violates Administrative Code § 21-124(b) which requires that such rooms be equipped with same." (§ 15 of the Complaint).

The Order to Show Cause by plaintiffs, Elizabeth Crowley, in her capacity as a New York City Council Member, Joseph P. Addabbo, Jr., in his capacity as a New York State Senator, Margaret M. Markey, in her capacity as New York State Assembly Member seeks a preliminary injunction against defendants, The City of New York, Steven Banks, Commissioner of the New York City Department of Homeless Services and Commissioner of the Human Resources Administration/Department of Social Services, enjoining and restraining defendants from taking any action to convert the Holiday Inn Express located at 59-40 55th Road, Maspeth, New York 11378 into a homeless shelter for adult families in violation of the New York City Administrative Code, specifically § 21-124 which section prescribes that cooking facilities be contained in each family unit, is hereby denied.

"The law is well settled that to prevail on an application for preliminary injunctive relief, the moving party must demonstrate "(1) a likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) that a balancing of equities favors [the movant's] position" (*Barone v. Frie*, 99 AD2d 129, 132 [2d Dept 1984] quoting from *Gambar Enterprises v. Kelly Servs.*, 69 AD2d 297, 306, 418 [2d Dept 1979]; *Aetna Ins. Co. v. Capasso*, 75 NY2d 860, 552 [1990]; and *W.T. Grant Co. v. Srogi*, 52 NY2d 496, 517, [1981]; see also, *Merscorp, Inc. v. Romaine*, 295 AD2d 431, 562 [2d Dept 2002]; and *Neos v. Lacey*, 291 AD2d 434 [2d Dept 2002]). The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the *status quo* (*U.S. Reinsurance Corp. v. Humphreys*, 205 AD2d 187, 192, 618 [1st Dept 1994]); see also, CPLR 6312[c]; and *Albany Medical College v. Lobel*, 296 AD2d 701,702 [3d Dept 2002]). The determination as to whether to issue a preliminary injunction is a matter left to the sound discretion of the Court (see, *Doe v. Axelrod*, 73 NY2d 748, 750 [1988]). Preliminary injunctive relief is a drastic remedy which will not be granted 'unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of showing an undisputed right rests upon the movant (*First Nat. Bank of Downsville v. Highland Hardwoods*, 98 AD2d 924, 926, 471 NYS2d 360; accord, *607 Buegler v. Walsh*, 111 AD2d 206, *Orange County v. Lockey*, 111 AD2d 896, 897 [1985]; *William M. Blake Agency, Inc. v. Leon*, 283 AD2d 423, 424 [2d Dept 2001]; and *Peterson v.*

Corbin, 275 AD2d 35, 36 [2d Dept 2000]). As the court stated in *Tucker v. Toia*, 54 AD2d 322, 325-326, however, "it is not for this court to determine finally the merits of an action upon a motion for preliminary injunction; rather, the purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits (*Hoppman v. Riverview Equities Corp.*, 16 AD2d 631; *Weisner v. 791 Park Ave. Corp.*, 7 AD2d 75, 78-79; *Peekskill Coal & Fuel Oil Co. v. Martin*, 279 App Div 669, 670; *Swarts v. Board of Educ.*, 42 Misc 2d (761,) 764, *supra*; *cf. Walker Mem. Baptist Church v. Saunders*, 285 NY 462, 474)." The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the *status quo* (*U.S. Reinsurance Corp. v. Humphreys*, 205 AD2d 187, 192, 618 [1st Dept 1994]); see also, CPLR 6312[c]; and *Albany Medical College v. Lobel*, 296 AD2d 701,702 [3d Dept 2002]).

To prevail on an application for preliminary injunction relief the first prong of the test is a demonstration by plaintiffs of a likelihood of success on the merits. Here, the plaintiffs have failed to satisfy this prong as they have no standing to bring the instant action. Plaintiffs lack standing to enforce §21-124 of the Administrative Code as in order to have standing, a plaintiff must have personally sustained an injury "within the zone of interests to be protected by the statute challenged," which injury is separate from the harm suffered by the general public (*Transactive Corp. v. New York State Department of Soc. Svcs.*, 92 NY2d 579 [NY 1998]). In the instant case, plaintiffs are not claiming to have suffered any personal injury whatsoever. The defendant, the City of New York's decision to place homeless adult families in the subject Holiday Inn Express has no personal effect on plaintiffs themselves.

Accordingly, this court finds that plaintiffs have failed to make a sufficient showing of likelihood of success, since they have no standing to bring the action. As plaintiffs have failed to satisfy the first prong of the requirements for the granting of a preliminary injunction, the Court need not consider the second and third prongs.

As such, it is,

ORDERED, that the plaintiffs' motion for a preliminary injunction is denied.

The motion by defendants, The City of New York, Steven Banks, Commissioner of the New York City Department of Homeless Services and Commissioner of the Human Resources Administration/Department of Social Services, for an order dismissing the plaintiffs' Complaint pursuant to CPLR 3211(a) (5) and (7) on the grounds that plaintiffs lack standing and capacity

to proceed and fail to assert a cognizable claim is hereby granted. As this Court has determined, when considering plaintiffs' motion for a preliminary injunction that plaintiffs do not have standing to bring the action, the Complaint is dismissed on this ground and the Court need not reach a determination on the remaining grounds for dismissal.

Accordingly, plaintiffs' Complaint is dismissed.

This constitutes the decision and order of the Court.

Dated: December 23, 2016

.....
Howard G. Lane, J.S.C.