

State of New York v Stevens
2019 NY Slip Op 33393(U)
February 1, 2019
Supreme Court, Cortland County
Docket Number: EF14-553
Judge: Jeffrey A. Tait
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CORTLAND

STATE OF NEW YORK and the NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

DECISION AND ORDER

Plaintiffs,

Index No. EF14-553

- against -


JAMES C. STEVENS, III, and LAWRENCE G. HILL, III

Defendants.

UPON the Affirmation of Assistant Attorney General Joseph M.

Kowalczyk, affirmed on January 9, 2019, the Affidavit of Scott Cook, sworn to on January 9, 2019, the Affidavit of Mauricio Roma-Hernandez, sworn to on January 23, 2019, plaintiffs' memorandum of law in support of their motion for a preliminary injunction dated January 9, 2019, and proceedings held at the Cortland County Courthouse at 2:00 PM on January 25, 2019, and all of the pleadings previously filed;

PURSUANT TO a Notice of Motion dated January 9, 2019, plaintiffs State of New York and New York State Department of Environmental Conservation (DEC) (collectively the State) moved for an order jointly and severally enjoining defendant James C. Stevens, III (Stevens) and Lawrence G. Hill, III (Hill) (collectively Defendants) to immediately abate a public nuisance relating to unpermitted storm water discharges from undeveloped

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	DECISION + ORDER ON MOTION Elizabeth Larkin, County Clerk

agricultural land owned by Hill and located on Ridgeview Avenue in the Town of Cortlandville (the Site);

IT IS HEREBY FOUND that pursuant to a Preliminary Injunction and Consent Order dated December 23, 2014 [NYSCEF Doc. No. 43] (Preliminary Injunction), Stevens was ordered to: i) cease discharging water from a stormwater diversion project on the Site (the Project); ii) restore the Site to pre-Project conditions; and iii) implement a DEC-approved engineering plan with appropriate stormwater controls for abating future down-gradient erosion. The Preliminary Injunction remains in effect;

IT IS FURTHER FOUND that pursuant to Decision and Order dated December 15, 2015 [NYSCEF Doc. No. 110] (Liability Order), the Court granted the State partial summary judgment establishing Stevens' liability on causes of action for violations of New York State Environmental Conservation Law, Article 17 and public nuisance. The Liability Order found that significant post-construction stormwater discharge from the Project caused extensive damage to St. Mary's Cemetery and flooding within New York State Route 281;

IT IS FURTHER FOUND that by Decision and Order dated April 26, 2015 [NYSCEF Doc. No. 167] (Contempt Order), Stevens was found in civil and criminal contempt regarding his failure to comply with the Preliminary Injunction and, as a civil contempt penalty, he was ordered to design, engineer, and construct a DEC-approved stormwater management control

system with two detention ponds. Stevens' engineering firm TDK Engineering Associates, PC (TDK) designed such a system and it was approved by DEC (TDK System). The Contempt Order remains in effect;

IT IS FURTHER FOUND that Stevens has not constructed the TDK System and his failure to implement a DEC-approved engineering plan with appropriate stormwater controls for abating further down-gradient erosion has prejudiced the State by delaying abatement of a public nuisance and the State's right to compliance with the lawful orders of the Court.

IT IS FURTHER FOUND that Hill has recorded with the Cortland County Clerk a quitclaim deed dated July 3, 2017, in which Stevens transferred his interest in the Site to Hill;

IT IS FURTHER FOUND that, prior to acquiring title to the Site, Hill knew: i) stormwater discharges from the Site had been found to be a public nuisance; ii) the Preliminary Injunction and the Contempt Order require implementation of a DEC-approved stormwater management control system designed to abate further down-gradient erosion; and iii) stormwater discharges from the Site are a continuing harm causing further down-gradient damage.

IT IS FURTHER FOUND that: i) Stevens cannot avoid liability for the nuisance by transferring title to the Site; ii) Hill is liable for maintaining a public nuisance on the Site; and iii) Stevens and Hill are jointly and severally liable for the likely consequences of the nuisance;

IT IS FURTHER FOUND that, in the absence of implementation of an adequate stormwater management control system on the Site, it is likely that areas down-gradient of the Site will experience additional damage;

IT IS FURTHER FOUND that an engineer retained by St. Mary's Cemetery, PLS Engineering, PC (PLS), has designed and engineered a single detention pond storm water management control system designed to abate further down-gradient damage at a lower cost than the TDK System (PLS System). The PLS System was designed with input from Hill and has been approved by DEC;

IT IS FURTHER FOUND that during oral argument on January 25, 2019, Hill stated that it would be feasible for him to commence construction of the PLS System within one week; and

IT IS FURTHER FOUND that during oral argument on January 25, 2019, Stevens had no comment regarding the State's motion.

IT IS HEREBY ORDERED that, as an acceptable lower cost alternative to the TDK System, Stevens and Hill shall: i) commence construction of the PLS System by February 1, 2019; ii) complete construction of the PLS System detention pond and north-south inlet swale by April 1, 2019; and iii) complete construction of the PLS System as soon as technically feasible;

IT IS FURTHER ORDERED that Stevens and Hill shall provide PLS and the State, including their employees, agents, and contractors, with

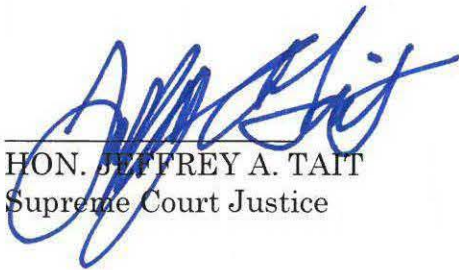
unrestricted access to the Site for purposes such as surveying, assessing damage, and inspecting construction activities; and

IT IS FURTHER ORDERED that Stevens and Hill shall appear before this Court at the Cortland County Courthouse at 2:00 PM on February 26, 2019 and provide status reports on the steps that they have each taken, as well as the additional steps they anticipate taking, toward implementation of this Decision and Order.

IT IS SO ORDERED

Dated: February 1, 2019
Binghamton, New York

ENTER



HON. JEFFREY A. TAIT
Supreme Court Justice