

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BILLINGS
Justice

PART 46

BKLYN HEARTS ASSOC INC
NY STATE URBAN DEVELOPMENT CORP

INDEX NO. 155641/16
MOTION DATE _____
MOTION SEQ. NO. 3

The following papers, numbered ⁴²³ to 427, were read on this motion for a temporary restraining order and preliminary

- Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 423-27 *affidavits*
- Answering Affidavits — Exhibits _____ No(s) _____
- Replying Affidavits _____ No(s) _____

Upon the foregoing papers, it is ordered that this motion is:

The court denied petitioner's motion for a temporary restraining order 7/20/17, but grants its motion for a preliminary injunction to the extent set forth and otherwise denies the motion pursuant to the accompanying decision. C.P.L.R. §§ 6301, 6312(a) and (b), 6313(a).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 8/4/17

Lucy Billings, J.S.C.

- 1. CHECK ONE: CASE DISPOSED
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

LUCY BILLINGS
 NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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In the Matter of the Application of
BROOKLYN HEIGHTS ASSOCIATION, INC.,

Petitioners

Index No. 155641/2016

- against -

DECISION AND ORDER

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION d/b/a EMPIRE STATE
DEVELOPMENT CORPORATION, BROOKLYN
BRIDGE PARK DEVELOPMENT CORPORATION,
and BROOKLYN BRIDGE PARK CORPORATION
d/b/a BROOKLYN BRIDGE PARK,

Respondents

- and -

RAL DEVELOPMENT SERVICES LLC, OLIVER'S
REAL ESTATE GROUP LLC d/b/a OLIVER'S
REALTY GROUP, LANDING A ASSOCIATES LLC,
and LAND B ASSOCIATES LLC,

Interested Party Respondents

-----X

LUCY BILLINGS, J.S.C.:

For the reasons explained on the record August 4, 2017, and summarized below, the court grants petitioner's motion for a preliminary injunction to the following limited extent pending the determination of the petition. C.P.L.R. §§ 6301, 6312(a). This preliminary injunction is conditioned on petitioner providing an undertaking or other security of \$8,000.00 by August 11, 2017, by depositing the funds with the New York County Clerk or through another means to which the parties mutually agree. C.P.L.R. § 6312(b); 1414 Holdings, LLC v. BMS-PSO, LLC, 116 A.D.3d 641, 643-44 (1st Dep't 2014); Witham v. vFinance Invs.,

Inc., 52 A.D.3d 403, 404 (1st Dep't 2008). Immediately and continuing after August 11, 2017, if petitioner provides the required undertaking or security, respondents shall not undertake any excavation, demolition, or construction activity on Parcel A or B at Pier 6 in Brooklyn Bridge Park that is irreversible or incapable of restoration to the original condition. As this limited restraint is unlikely to cause significant damage to or impose undue hardship on respondents, the amount of the undertaking or security is correspondingly modest. C.P.L.R. §§ 6301, 6312(a) and (b).

Insofar as respondents proceed with excavation, demolition, or construction, given that petitioner commenced this proceeding before any such activity, respondents proceed at their peril. Because the construction activity that occurs between its commencement in July 2017 and the determination of the petition is not part of the record in this proceeding, this activity will not affect the court's determination of the petition.

Petitioner's approximately 800 members are suffering irreparable harm due to the noise and vehicular traffic congestion in and near the Brooklyn Bridge Park caused by respondents' excavation, demolition, and construction activity on Parcels A and B at Pier 6. C.P.L.R. §§ 6301, 6312(a); 1414 Holdings, LLC v. BMS-PSO, LLC, 116 A.D.3d at 643; Second on Second Cafe, Inc. v. Hing Sing Trading, Inc., 66 A.D.3d 255, 272-273 (1st Dep't 2009); Concourse Rehabilitation & Nursing Ctr., Inc., 64 A.D.3d 405, 405 (1st Dep't 2009); Witham v. vFinance

Invs., Inc., 52 A.D.3d at 403-404. Petitioner has not shown, however, that the risk of harm is so serious as to pose a danger to public health or safety or that respondents currently are violating the New York City Administrative Code provisions that regulate the level and hours of noise and the hours of construction activity. E.g., N.Y.C. Admin. Code §§ 24-219, 24-220, 24-222, 24-223, 28-100 - 28-104, 30-103. Petitioner nonetheless may avail itself of the mechanisms to enforce those provisions in the future, although the noise level is expected to decrease as respondents progress from their current phase of pile driving to excavation and then to pouring concrete. While the use of the park and thus any disruption to use is greater during the summer season, so also are the summer and fall seasons better suited to respondents' planned construction activities: plans that respondents contend are necessary to sustaining the park's operations and maintenance in the long term.

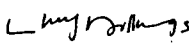
For these reasons and the further reasons explained on the record August 4, 2017, and summarized below, the court denies the remainder of the preliminary injunctive relief sought. This denial is also based on the lack of a convincing showing that petitioner is likely to prevail on the merits of its claims and its own concession that, even if petitioner prevails, the likely result will allow at least part of the construction currently planned, even if delayed and of a lesser scale. C.P.L.R. §§ 6301, 6312(a); Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 N.Y.3d 839, 840 (2005); Thornton v. New York City Bd./Dept. of

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Educ., 125 A.D.3d 444, 445 (1st Dep't 2015); Al Entertainment LLC v. 27th St. Prop. LLC, 60 A.D.3d 516, 516 (1st Dep't 2001); Metropolitan Steel Indus., Inc. v. Perini Corp., 50 A.D.3d 321, 322 (1st Dep't 2008). Nevertheless, this denial is without prejudice to a future showing, not made now, that the traffic congestion in fact poses a danger to public safety, as the traffic congestion, unlike the noise, is not expected to decrease with the next phases of excavation and pouring concrete.

DATED: August 4, 2017



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.