

SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

-----X

MATTER OF RICHARD A. BRUMMEL, JOSHUA DICKER
and DAVID GREENGOLD,

**Affidavit in Support of
Motion for Preference**

Petitioners-Appellants,

Appellate Division Docket
Number:

For Judgements and an Order Pursuant to Article 78, Section 3001
(Declaratory Judgement), Section 6311 (Preliminary Injunction) and
Section 6313 (Temporary Restraining Order) of the Civil Practice Law
and Rules ("CPLR")

2014-10641

-against-

THE TOWN OF NORTH HEMPSTEAD TOWN BOARD a/k/a TOWN COUNCIL,
THE NASSAU COUNTY LEGISLATURE, NASSAU COUNTY EXECUTIVE
EDWARD P. MANGANO, and THE ROSLYN WATER DISTRICT,

Respondents and Necessary Parties-Appellees

-----X

State of New York, County of Nassau, SS:

1. Richard Brummel, 15 Laurel Lane, East Hills, New York 11577, Joshua Dicker, 17 The Tulips, Roslyn Estates, New York, 11576, and David Greengold, 29 Diana's Trail, Roslyn Estates, New York, 11576, being duly sworn, do depose and say: we are the Petitioners in this matter and we submit this affidavit in support of a motion under the authority of Civil Procedure Law and Rules ("CPLR") Rule 5521 for preference in the hearing of Petitioners' appeal, and under authority of 22 NYCRR §670.7 (b).
2. Preference in hearing this matter will benefit all parties in the matter by providing finality in an issue that can result in irreparable damage to a publicly-owned natural

resource, and the expenditure of public funds that may ultimately be wasted depending on the outcome of the appeal, and the promptness of the hearing and decision by this Court may determine some of those outcomes.

3. Petitioners are *pro se* litigants and have been unable to accelerate the schedule of their own submissions any faster than has occurred due to other time commitments and the complexity of the case.
4. Petitioners have stated the facts of the present matter in our appellate brief: to wit, three agencies of local government have undertaken plans, now imminent (Exhibit 1, news article), to build a quasi-industrial water-treatment facility in the recreational forest of a county park, but they failed to comply with procedural and substantive requirements of the State Environmental Quality Review Act, Article 8 of the state Environmental Conservation Law ("SEQRA"), which led to the present hybrid Article 78 special proceeding and action for declaratory judgement.
5. Petitioners have sought, and twice were granted, TRO's from the trial court and the Appellate Division, although the TRO's were later vacated and preliminary injunctions were denied.
6. In September, 2014, the trial court granted a motion to dismiss the matter on the basis that Petitioners lacked standing. Petitioners filed a notice of appeal in October, 2014. Petitioners in November, 2014, obtained from this Court a TRO, but it was vacated in December, 2014. Subsequently Petitioners, who are *pro se* litigants, assembled the certified appendix and composed the extensive brief now before the Court.
7. A preference in hearing this appeal is desirable for the benefit of all parties, in

order to clarify the status of this matter during the time the agencies' plans-to-act become actions-in-fact which, barring further legal intervention, will substantially alter a public natural resource and will result in substantial public expenditure.

8. The actions that Petitioners have challenged will, if begun, result in the clearing of potentially dozens of mature, towering trees in a small public recreational-forest, the removal of substantial ground cover and tons of soil, as well as involve massive excavation and the construction of two buildings, one approximately thirty feet tall, the other of unknown dimensions.
9. The government agencies have, to Petitioners' knowledge, concluded all the steps needed to begin the land-clearing and construction, as reported by the media (Exhibit 1) and as observed by Petitioner Richard Brummel in person. Petitioner Brummel testified before the county legislature urging it not to approve or permit the construction until this appeal was adjudicated, and Petitioners submitted a letter to the same effect (Exhibit 2).
10. Despite Petitioners' warnings, the agencies have given no indication they are delaying their actions. It may be noted that any pretext by Respondents that their haste is based on an "emergency" in water resources is a false assertion that Petitioners have fully debunked in their various submissions to the courts. Petitioners have noted, for example, that Respondents never declared any emergency under the provisions of SEQRA (see 6 NYCRR 617.5 (c)(33)), and that the full extent of the "water restrictions" imposed at the height of water use last summer, at which time the subject well had been out of service for six months, was an "odd-even" lawn-watering restriction (Exhibit 3, transcript of legislative hearing).

11. Petitioners, all three of whom regularly use and enjoy the recreational forest, and two of whom live adjacent to the forest and can see the site of the proposed project from their homes, have articulated a strong case for standing to litigate that they expect will be sustained by this Court, once heard.
12. If Petitioners' standing is sustained, and the Article 78 challenge is thereupon heard and sustained on the merits, there is a substantial possibility that the planned water-treatment facility will eventually be required by proper SEQRA analysis to be placed outside the public forest -- in the water-district compound where it had originally been intended before local politics intervened (Exhibit 4, statement of water district chairman).
13. Therefore, this Court's ruling has the potential to require a halt in construction that would otherwise cause long-term damage to an environmental resource, as well as a waste of public money, depending on how far advanced the project is at the point this Court and the trial court render their decisions.
14. As noted, the Respondent agencies are fully on notice that their activities are under challenge, and a decision in Petitioners' favor could lead to wasteful expenses and unnecessary damage. Further, Petitioners, having duly sought injunctions, would legally be entitled to a reversal of the actions of the agencies if the courts find in Petitioners' favor.
15. Petitioners thus seek from this Court a preference in the hearing of this appeal, in order that actions on the ground not proceed any further than necessary in the absence of finality from the courts, for the benefit of all parties involved.

(Affidavit in Support of Order to Show Cause, Motion for Preference, Brummel et al. v. Town of North Hempstead et al., continued)

Sworn before me this ____ day of May, 2015

RICHARD A. BRUMMEL
15 Laurel Lane
East Hills, N.Y. 11577
(516) 238-1646

NOTARY PUBLIC

Sworn before me this ____ day of May, 2015

JOSHUA DICKER
17 The Tulips
Roslyn Estates, N.Y. 11576
516-478-5451

NOTARY PUBLIC

Sworn before me this ____ day of May, 2015

DAVID GREENGOLD
29 Diana's Trail
Roslyn Estates, N.Y. 11576
516-993-9522

NOTARY PUBLIC