

At a Motion Term of the Supreme Court of the State of New York, held in and for the County of Onondaga, at 401 Montgomery Street, Syracuse, New York, on November 10, 2022.

Present: Hon. Gerard J. Neri, J.S.C.

STATE OF NEW YORK  
SUPREME COURT ONONDAGA COUNTY

**DECISION and ORDER**

**RENEW 81 FOR ALL, by its President Frank L. Fowler, CHARLES GARLAND, GARLAND BROTHERS FUNERAL HOME, NATHAN GUNN, ANN MARIE TALIERCIO, TOWN OF DeWITT, TOWN OF SALINA, and TOWN OF TULLY,**

Index No: 007925/2022

Petitioners,

-against-

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION, MARIE THERESE DOMINGUEZ, in her official capacity as the Commissioner of New York State Department of Transportation, NICOLAS CHOUBAH, P.E., in his official capacity as the New York State Department of Transportation Chief Engineer, and MARK FRECHETTE, P.E., in his official capacity as the New York State Department of Transportation I-81 Project Director,**

Respondents,

-and-

**FEDERAL HIGHWAY ADMINISTRATION and JOHN DOES,**

Interested or Necessary Parties.

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By Order to Show Cause signed by this Court on November 2, 2022, Petitioners RENEW 81 FOR ALL (“Renew 81”), by its President Frank L. Fowler (“Fowler”), CHARLES GARLAND (“Garland”), GARLAND BROTHERS FUNERAL HOME (“Garland Bros.”), NATHAN GUNN (“Gunn”), ANN MARIE TALIERCIO (“Taliercio”), TOWN OF DeWITT (“DeWitt”), TOWN OF SALINA (“Salina”), and TOWN OF TULLY (“Tully”, and collectively

as the “Petitioners”) seek a preliminary injunction staying the proceedings in furtherance of the Interstate 81 Project P.I.N. 3501.06 (the “Project”) and stay, enjoin, and asking the Court to prohibit Respondents NEW YORK STATE DEPARTMENT OF TRANSPORTATION (“DOT”), MARIE THERESE DOMINGUEZ, in her official capacity as the Commissioner of New York State Department of Transportation (the “Commissioner”), NICOLAS CHOUBAH, P.E., in his official capacity as the New York State Department of Transportation Chief Engineer (“Chief Engineer”), and MARK FRECHETTE, P.E., in his official capacity as the New York State Department of Transportation I-81 Project Director (“Project Director”, and collectively as the “Respondents” or the “State”) and those acting on their behalf, pending the final determination of this proceeding, from constructing the Project, awarding design and/or building contracts, or conducting proceedings or otherwise taking action in furtherance of the Project (*see* Order to Show Cause, Doc. No. 20). Respondents oppose the relief sought.

Petitioner seeks an order requiring Respondents to refrain from moving forward on the Project during the pendency of the instant action. CPLR §7805 addresses stays in Article 78 proceedings and courts utilize the same standard as preliminary injunctions (*see Melvin v. Union College*, 195 A.D.2d 447, 448 [Second Dept. 1993]; *see also (Jarrett v. Westchester County Dept. of Health*, 166 Misc.2d 777, 778 [Sup Ct, Westchester County 1995]). Preliminary injunctions are governed by Article 63 of the CPLR.

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff” (CPLR §6301).

“In order to establish its entitlement to a preliminary injunction, the party seeking the injunction must establish, by clear and convincing evidence, three separate elements: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor. Entitlement to a preliminary injunction depends upon probabilities, any or all of which may be disproven when the action is tried on the merits. A motion for a preliminary injunction is addressed to the sound discretion of the trial court, and the decision of the trial court on such a motion will not be disturbed on appeal, unless there is a showing of an abuse of discretion (Destiny USA Holdings, LLC v. Citigroup Global Mkts. Realty Corp., 69 A.D.3d 212, 216 [Fourth Dept. 2009], *internal citations and quotations omitted*).

The Court finds that Petitioners have met their burden as set forth in their Petition, Memoranda of Law, other supporting papers, and as articulated during the November 10, 2022 oral argument to grant the temporary restraining order pending a final determination by this Court. The State provided speculation in opposition to the concrete examples cited by Petitioners. For example, the State stated they would lose tens of millions of dollars if the stay were granted. When pressed, counsel for the State admitted she did not know what, if any, financial penalty the State would actually incur as a result of a short delay in this Project which has been pending since 2008. Nor was counsel able to state that a delay would result in the Federal Government not providing promised funds for the Project.

Further, the Petitioners and Respondents consent to the motion by the Federal Highway Administration (“FHA”). Petitioners’ consent is insofar as they do not and have not claimed that FHA is a necessary party (*see* Memorandum in Reply, Doc. No. 31, p. 5 of 12). Petitioners reiterate that their suit is solely based on Respondents’ failure to comply with New York State

regulations and named FHA solely as a possible interested party. The Court agrees and finds that release of FHA is proper and that FHA is not a necessary party to Petitioners' State law claims (*see e.g. Natural Resources Defense Council v. City of New York*, 528 F.Supp. 1245, 1251 [S.D.N.Y.1981], *rev'd on other grounds* 685 F.2d 425 [2d Cir. 1982]).

**ORDERED**, that the Respondents, and their members, agents, representatives and/or employees and all others acting on their behalf, are prohibited from constructing the Project, awarding design and/or building contracts, or conducting proceedings or otherwise taking action in furtherance of the Project until further order of the Court; and it is further

**ORDERED**, the Petition is dismissed as to the Federal Highway Administration.

Dated: November 10, 2022

  
HON. GERARD J. NERI, J.S.C.

ENTER.