At a term of Supreme Court held in and for the County of Jefferson, in the City of Watertown, New York on the 26th day of April 2024

PRESENT: HONORABLE JAMES P. McCLUSKY
Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF JEFFERSON

THOUSAND ISLANDS LAND TRUST, INC.

Plaintiff,

-vs-

RON CLAPP
CARLETON VILLA, LLC

Defendants.

**DECISION and ORDER**

Index No. EF2024-1583

Plaintiff has brought a declaratory judgment seeking a permanent injunction. In furtherance of their suit, they brought a motion by Order to Show Cause for a restraining order and preliminary injunction. Defendants oppose the motion.

The Court has considered all documents filed in the New York State Courts Electronic Filing system under Index Number EF2024-1583.

"Preliminary injunctive relief is a drastic remedy which is not routinely granted" (citation omitted) Delphi Hospitalist Servs. LLC vs. Patrick 163 A.D.3d 1441 (4th Dept. 2018). "A preliminary injunction may be granted under CPLR Article 63 when the party seeking such relief demonstrates: (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 partners favor." Doe vs. Axelrod 73 N.Y.2d 748, 750. (1988)

The parties disagree on the interpretation of the two documents that control the property in question; a conservation easement dated August 6, 1986 and recorded in the Jefferson County Clerk's Office in Liber1037 at page 296 and a Declaration of Restrictions dated August 8, 1986 and recorded in the Jefferson County Clerk's Office in Liber 1038 at page 211. Defendant initially takes the position that there is no issue in controversy as they have completed the work. However, they will not state no more work will be completed and they rely on their interpretation of the restrictions in determining there is no issue in controversy.

The conservation easement limits the development on the Carleton Island and most significantly limits what can be done within 100 feet of the shoreline. These restrictions are clear and unambiguous. Plaintiff also cites paragraph 2a and claims it allows more control over development. However, the control is limited to the property subject to the easement only.

Plaintiff takes a broad reading of the easement and clearly misinterprets certain terms that they are unlikely to be successful on. However, the restrictions involving the first 100 feet are broad and would limit most development in that area. Plaintiff has presented witnesses and evidence that demonstrate a likelihood that those restrictions have been violated. This includes excavating in the Fort Haldimand Buffer zone without 30 days' notice. (However, it does not appear the excavating itself was a violation – only that notice was not provided). Plaintiff alleges that Defendant's project is a commercial activity, and no excavation is allowed. However, the easement does not prohibit all excavation but rather "commercial excavation". No proof has been presented that commercial excavation has occurred.

An injunction is not available where the movant has an adequate remedy at law. In other words, if a litigant can be fully compensated by a monetary award no irreparable injury occurs. The agreements drawn by plaintiff anticipate violations and states the violator must restore the lands. Though this suggests that a monetary award is available money would not make plaintiff whole: there is no guarantee that the vegetation growth would return or that the fauna would rebound.

The balance of equities tip in favor of the plaintiff. Currently Defendants are in the process of attempting to get approval from the Town and / or its boards. They are not in now the position to be able to complete their development. Therefore the court will grant the preliminary injunction.

It is therefore

ORDERED Defendant is enjoined from doing any work on property within 100 feet of the shoreline without written approval from Plaintiff or further Court order; and it is further

ORDERED that the Court will not require an undertaking at this time, subject to an application by Defendants if proper proof as to the amount is presented.

May 20, 2024
Watertown, New York

ENTER

JAMES P. McCLUSKY
Supreme Court Justice

DECISION + ORDER ON MOTION
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