

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

In the Matter of the Application of THE COUNTY OF ONONDAGA, and KATHYRN ANDERSON, MD, PhD, MSPH, in her official capacity as Commissioner of the Onondaga County Department of Health,

Petitioners-Plaintiffs,

-against-

THE CITY OF NEW YORK, ERIC ADAMS, in his capacity as Mayor of the City of New York, and MOLLY WASOW PARK, in her capacity as Commissioner of the New York City Department of Social Services and CWP SYRACUSE I LLC, d/b/a Candlewood Suites Syracuse-Airport,

Respondents-Defendants,

For a Judgment pursuant to Article 78 and for a Declaratory Judgment under Article 30 of the Civil Practice Law and Rules.

Index No.

**AFFIRMATION IN
SUPPORT OF ORDER TO
SHOW CAUSE WITH
TEMPORARY
RESTRAINING ORDER**

JOHN A. SICKINGER, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am a Senior Deputy County Attorney for the County of Onondaga and submit this affirmation in support of the Petition and Complaint of the Petitioners-Plaintiffs in the above-captioned matter. I am sufficiently familiar with the facts and circumstances surrounding this matter to make this affirmation, and make this affirmation upon information and belief and to the best of my knowledge.

2. The County brings this combined Article 78 special proceeding/complaint to

enjoin the Respondents from establishing an unregulated homeless shelter within the County of Onondaga by transporting and/or housing adults experiencing homelessness, who currently reside at a temporary shelter in New York City, (the "Proposed Transfer"), to a proposed temporary shelter at the Respondent Candlewood Suites Syracuse Airport located at 5414 South Bay Road, North Syracuse, New York 13212 ("Candlewood").

3. Respondents-Defendants City of New York, Eric Adams, Molly Wasow Park, and the New York City Department of Social Services (collectively the "City Respondents") decision for the Proposed Transfer exceeds their legal authority because the City Respondents only have authority to operate and create temporary shelters for adults within the five boroughs of New York City.

4. The City Respondents may not operate the Candlewood as a temporary shelter for adults, and implement the Proposed Transfer, under the purported emergency powers of Respondent-Defendant Adams under his Emergency Executive Order 398, issued May 5, 2023 ("EO 398"). A true and correct copy of said Executive Order 398 is annexed hereto as EXHIBIT A.

5. The Court should annul these determinations and enjoin the Proposed Transfer because they are wholly unsupported by the limited scope of New York City Executive Order 224. A true and correct copy of said Executive Order 224 is annexed hereto as EXHIBIT B.

6. On May 18, 2023, Onondaga County Executive J. Ryan McMahon II, pursuant to his authority under New York State Executive Law §24, declared a State of Emergency and issued Local Emergency Order No. 1 of 2023 in response to the planned transfer of migrants by the City of New York to Onondaga County, which would rapidly increase the

number of homeless persons in the geographical boundaries of the County of Onondaga to unsustainable levels. A copy of the Local Emergency Order is annexed hereto as EXHIBIT C¹.

7. Notwithstanding Executive Order No. 1 issued by County Executive McMahan, Respondents-Defendants, upon information and belief, continue to proceed with a transfer of hundreds of homeless individuals to Onondaga County.

8. The Court has jurisdiction over this matter pursuant to CPLR § 7803(3) because Respondents made decisions in excess of their lawful authority and "in violation of lawful procedure, ... affected by an error of law ... [and] arbitrary and capricious ... [and] an abuse of [and] an abuse of discretion."

9. Venue is proper in Onondaga County pursuant to CPLR § 506(b), because it is the County where the real property subject to the allegations and claims alleged in the petition and complaint is located, and where the consequences of the actions of the Respondents-Defendants will be felt.

10. Petitioners-Plaintiffs have standing to bring the claims asserted here as they are representatives of the public within the geographical boundaries of the County of Onondaga directly and adversely affected by Respondents-Defendants derogation of the law resulting from the planned use of the Candlewood property as a temporary homeless shelter, including impacts to health, safety, and increased social services burden the Petitioners-Respondents will be required to bear by law.

11. The Petitioners-Plaintiffs are further directly injured by the Respondents-Defendants violation of Onondaga County Local Emergency Order Number 1 of 2023, which,

¹ The Local Emergency Order was extended on May 22, 2023. A copy of the extended Order is attached hereto as EXHIBIT E.

upon information and belief, is being wholly ignored by the Respondents-Defendants, and have standing to enforce its own executive orders.

12. In addition, Petitioners-Plaintiffs are obligated under Article XVII, § 1 of the New York State Constitution to "aid, care and support" the needy and under Social Services Law §62 to be "responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself."

13. The purpose of a preliminary injunction is to maintain the status quo until a decision can be reached on the merits of a case. Three factors govern the issuance of a preliminary injunction: (i) a likelihood of success on the merits, (ii) the prospect of irreparable injury in the absence of an injunction; and (iii) a balancing of equities in the movant's favor. *See* Civil Practice Law and Rules § 6301.

14. First, for each of the reasons set forth herein, Petitioners have established a likelihood of success on the merits. There is no dispute that the City of New York has indicated it intends to willfully ignore the valid Local Emergency Order of the Onondaga County Executive, and no application for a license under the Order has been made by the City.

15. Second, Petitioners establish irreparable harm because, absent a preliminary injunction, the Proposed Transfer will have profound, and irreversible, effects on the residents of Onondaga County.

16. Onondaga County's limited shelter/housing resources are already strained. The County simply cannot absorb hundreds, if not thousands, of individuals in need of housing, public services, and medical care, which would greatly expand the current

homeless population it is presently supporting.

17. Upon information and belief, under present regulation and administrative guidance from the New York State Office of Temporary Disability and Assistance (OTDA), a social services district has the responsibility to (1) find appropriate placements for homeless individuals and families, notwithstanding whether another district is fiscally responsible and (2) if an individual leaves the out-of-district placement, the placing district is only responsible for approximately the first two months of a new permanent placement. This means, if any of the individuals placed by New York City leave the City's illegal shelter system, they will become a County responsibility.

18. The Petitioners-Plaintiffs reasonably believe that after the proposed four-month period, the homeless individuals housed in Onondaga County will not leave the County, and the City will be under no obligation to continue to support these individuals.

19. Moreover, it is reasonably likely such individuals will naturally leave the placement and not return, instead opting to live in the community without restriction. Thus, this population will likely become a County responsibility for years, if not permanently.

20. Furthermore, upon information and belief, Candlewood lacks the infrastructure to support a permanent, resident homeless population in need of comprehensive social services, particularly once the City's temporary support is inevitably withdrawn.

21. Accordingly, in failing to follow applicable regulations and appropriate procedures, the Respondents-Defendants have caused irreparable harm to the Petitioners-

Plaintiffs, both as residents and the residents that they represent, serve, and support in their official capacity.

22. Finally, a balancing of the equities favors granting preliminary injunctive relief to Petitioners-Plaintiffs.

23. It would be inequitable, if not unconscionable, to allow the Proposed Transfer to go forward where an ultimate decision adverse to the Respondents-Defendants on the merits would force the further dislocation of the homeless individuals improperly placed in the County. Additionally, it would be inequitable to allow the Candlewood to evict current residents to make room for those being transported to Onondaga County by New York City.

24. Pursuant to CPLR § 7803(3), Respondents' efforts to (i) open the Candlewood as a temporary homeless shelter outside the City of New York and (ii) implement the Proposed Transfer are in excess of any legal authority.

25. Accordingly, the Court should annul and enjoin Respondents' determination to (i) open the Candlewood as a temporary homeless shelter outside the City of New York and (ii) implement the Proposed Transfer.

26. Pursuant to CPLR § 7803(3), the Court should annul and enjoin Respondents' determination to (i) open the Candlewood as a temporary homeless shelter outside the City of New York and (ii) implement the Proposed Transfer.

27. Respondents' efforts to (i) open the Candlewood as a temporary homeless shelter outside the City of New York and (ii) implement the Proposed Transfer were made in violation of lawful procedure, affected by an error of law, and arbitrary and capricious and/or is an abuse of discretion.

28. Accordingly, the Court should annul and enjoin Respondents' determination to (i) open the Candlewood as a temporary homeless shelter outside the City of New York and (ii) implement the Proposed Transfer.

29. Unless Respondents-Defendants are permanently restrained they will cause serious and irreparable injury, which includes injury to government, permanent injury to the community, and injuries to individuals and families, both in and outside the Respondents' illegal shelter system.

30. Based on the foregoing, the balancing of equities is in favor of Petitioners-Plaintiffs.

31. Pursuant to CPLR §3001, Plaintiffs-Petitioners seek a declaratory judgment to specify and determine the right and duties of the parties, including, but not limited to, that (1) the Respondents-Defendants' Proposed Transfer is *ultra vires*, that (2) the Respondents-Defendants are subject to local zoning and applicable Executive Orders in the jurisdiction where a proposed shelter is located; and (3) that the Respondents-Defendants are required to obtain licensure and registration through the New York State Office of Temporary Disability and Assistance before opening a temporary homeless shelter.

32. Pursuant to Civil Practice Law and Rules §3001, a judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties accordingly.

33. In addition, pursuant to Civil Practice Law and Rules §6301 et seq., a permanent injunction is sought to restrain Respondents-Defendants.

34. Pursuant to Rule 202.8-e, notice of the request for a temporary restraining order was given to the municipal Respondents-Defendants who would be the principal parties

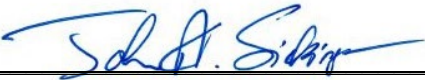
restrained by the temporary injunction prior to the filing of the within application. A true copy of the Notice is attached as EXHIBIT D.

35. As regards to the non-municipal Respondent-Defendant, the papers upon which this application are based are being sent via mail to the registered service address for CWP Syracuse I LLC but could not be provided in advance due to the need to file this application for emergency relief immediately and avoid irreparable harm.

36. No previous application has been made by the Petitioners to this Court or any judge for the specific relief sought herein.

37. Based upon the foregoing and the annexed exhibits, it is respectfully requested that the relief requested in the annexed Order to Show Cause be granted in its entirety and the Court grant the Petitioners such other and further relief as the Court deems just and proper.

Dated: May 22, 2023
Syracuse, New York



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