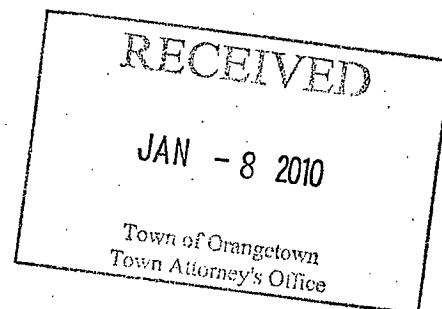


SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

P R E S E N T:
HON. WILLIAM A. KELLY
SUPREME COURT JUSTICE



-----X
THE TOWN OF ORANGETOWN,

Plaintiffs,

Index No. 12018/09

-against-

ORDER

THE SOUTH ORANGETOWN CENTRAL
SCHOOL DISTRICT,

Defendants.
-----X

The following papers were read on the motion by the plaintiff for an Order, pursuant to CPLR 6301, enjoining the defendant from denying access to a pool located at the South Orangetown Middle School:

Order to Show Cause - Affirmation - Affidavit - Affidavit	1-4
Affirmation in Opposition	5

Upon the foregoing papers it is hereby ORDERED that the said motion is granted to the extent set forth herein.

The dispute over access to the Middle School pool is based upon differing interpretations of Inter-municipal agreement [hereinafter "agreement"] entered into by THE TOWN OF ORANGETOWN [hereinafter "Town"] and THE SOUTH ORANGETOWN CENTRAL SCHOOL DISTRICT [hereinafter "School District"]. Under the 2005 agreement, the Town was permitted to use School District facilities, including the pool, for Town programs. The School District had

the right to terminate the agreement for any reason upon one year's notice or upon 30 days notice for breach of the agreement.

Additionally, the agreement contained a provision that required that Town to pay one half of the maintenance costs and to pay "50% of any major unfunded system replacement and/or repair of equipment to the pool as is required to maintain the pool in proper working condition for the function and safety of all participants/users." Subsequently, the School Board commenced substantial renovations of the swimming facility at the middle school. The renovations closed the facility for a substantial period of time and cost in excess of four million dollars.

The School District sought to have the Town contribute to the cost of the renovation contending that pursuant to the agreement, the Town was responsible for one half of the cost. The Town refused to pay the demanded amount, claiming essentially that it was a year to year tenant who did not consent to contribute to a cost of improvements of the nature undertaken by the School District.

After the parties were unable to negotiate a resolution, the School Board informed that it was terminating the use agreement in 30 days due to the Town's breach. Thereafter, the initiated the instant proceeding seeking a declaratory judgment.

A preliminary injunction is a drastic remedy which will only be granted if the moving party establishes a clear right to relief under the law and upon the relevant facts set forth in the record. William M. Blake Agency, Inc. v. Leon, 283 AD2d 423 (2nd Dept 2001). Injunctive relief will be granted where the moving party demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balancing of the equities favor the

granting of the relief. CPLR 6301; Pearlgreen Corp. v. Yau Chi Chu, 8 AD3d 460, 778 N.Y.S.2d 516 (2nd Dept 2004); Neos v. Lacey, 291 AD2d 434 (2nd Dept 2002).

To establish a likelihood of success on the merits, the movant must show its right to a preliminary injunction is plain on the facts of the case. Peterson v. Corbin, 275 AD2d 35 (2nd Dept 2000); and Merrill Lynch Realty Associates v. Burr, 140 AD2d 589 (2nd Dept 1988). Irreparable injury in this context means any injury for which money damages are insufficient. Klein, Wagner & Morris v. Lawrence A. Klein, P.C., 186 AD2d 631 (2nd Dept 1992). Economic loss which is compensable by money damages does not constitute irreparable harm so as to warrant the granting of a preliminary injunction. EdCia Corp. v McCormack, 44 AD3rd 991 (2nd Dept. 2007). See, 1659 Ralph Ave. Laundromat Corp v. David Enterprises LLC, 307 AD2nd 288(2nd Dept. 2003)(seeking money damages for breach of lease and tortious interference with contract provides an adequate remedy at law). Moreover, it must be shown that the irreparable harm is threatened and immediate. Held v. Hall, 190 Misc2d 444 (Sup. Ct. Westchester Co. 2002). Finally, these elements must be established by affidavit or other competent proof. Bare conclusory allegations are insufficient to support the granting of injunctive relief. Neos v. Lacey, 291 AD2d 434 (2nd Dept 2002).

Once the elements necessary for the granting of a preliminary injunction are met, factual issues raised by the opponent do not require denial of the motion. CPLR 6312 (c). The existence of issues of fact on a preliminary injunction motion cannot be the basis, in and of itself, for denial of the motion. 1995 **Report of the Advisory Comm. On Civil Practice**, pp 62-3. The 1997 amendment which adds subparagraph c to CPLR 6312 was intended to negate case law which evolved denying injunctive relief where there was a "sharp issue of fact". See, e.g., Walsh

v. Design Concepts, Ltd., 221 AD2d 454 (2nd Dept 1995).

Here, the Town has satisfied the criteria necessary to obtain a preliminary injunction. The plaintiff has shown a likelihood of success on the merits. Based upon the language of the agreement, and the facts before the Court at this time, it appears that the installation of a completely new pool and attendant facilities falls outside the scope of the language of the agreement, and certainly outside the spirit of the agreement.

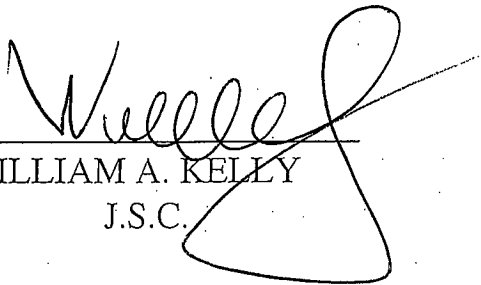
In this case, the harm would be irreparable. The entire dispute involves financial obligations. The continued use of the pool by Town residents during the litigation of the matter does not alter the respective legal positions of either party. However, foreclosing the use of the pool by Town residents would harm the public as many residents who would otherwise use the pool would be left without any other options. The harm is clearly non-economic and could not be compensated through any financial settlement. In short, there would be no prejudice, only harm.

Finally, balancing the equities in this matter, it is clear that the School District should be enjoined from withholding use of the pool from the public. The dispute centers on the respective financial responsibilities of the parties. The economic reality is that whichever party prevails, the local taxpayers will bear the ultimate burden through taxation. The taxpaying public should not be used as a pawn during the dispute. After all, no matter who ultimately holds the legal title, the tax payer is the true owner and intended beneficiary of the pool.

This Decision shall constitute the Order of the Court.

ENTER

Dated: New City, New York
January 5, 2010



WILLIAM A. KELLY
J.S.C.