

PETER WLODYLO,  
Plaintiff

v.

PRELIMINARY INJUNCTION

INHABITANTS OF GARDINER et al,  
Defendant

This matter came on for hearing June 29, 2007. Plaintiff appeared *pro se*; defendants City of Gardiner and Jeff Kobrock, City Manager, appeared through counsel. The plaintiff, his son, Michael Wlodylo, and wife, Debra Wlodylo, testified under oath. The plaintiff presented exhibits which were admitted into evidence. The court also observed a video presented by the plaintiff on CD-ROM. Defendants presented no evidence.

Keeping in mind a long history of animosity between the plaintiff and defendant Kobrock, the court finds the plaintiff was issued a building permit to restore his residence, an old residential building facing Clinton Street in the City of Gardiner. Attached to and incorporated in the permit are drawings, plans, etc. detailing the nature and location of authorized construction work. The permit was issued June 12, 2006 and by its terms, is valid provided the work is commenced within one year of the date issued. The work must be substantially completed within two years of the date issued.

In May of 2007, the plaintiff demolished a porch on the existing building and into June, dug out the foundation to the porch. In the excavation, on the footprint of the foundation, and consistent with the plans attached to the building permit, the plaintiff poured two footings with rebar for the foundation of a new porch or deck. The work resulted in an excavation of five foot depth immediately adjacent to the City right of way creating, without barrier, (the plaintiff did place a yellow restricted area tape along the edge of the pavement and testified large rocks were placed as a barrier), a dangerous situation for automobile and foot traffic and subjecting the paved street to be undercut by erosion.

On June 11, 2007, a representative of the City Public Works Department, accompanied by City policemen, arrived at the scene with a backhoe and a dump truck with a load of gravel. Warning the plaintiff not to interfere at risk of being arrested and advising plaintiff that the excavation was a danger to traffic and a risk of damage to the City street by erosion, they proceeded to dump the gravel into the excavation and created a slope of the gravel from the street, covering up the poured footings and tools left in the excavation by the plaintiff.

The representatives of the City, in the presence of the police officers, ordered plaintiff not to disturb the gravel or he would be arrested. Since that occasion, the location has been subject to constant monitoring by police cruisers. Under threat of arrest and constant observation by the City police, the plaintiff, his wife and son, have been afraid of continuing any work on the permitted project, including attempting to retrieve their tools buried under the gravel dumped by the City. Plaintiff seeks a protective order to allow him to continue the work under the building permit.

It is the position of the defendants that the City personnel and equipment were lawfully on the premises and fully authorized by law to protect its citizens and streets from a dangerous condition created by the plaintiff. To this the court agrees. However, the City does not have the authority to destroy personal property of the plaintiff in the exercise of its authority without providing the plaintiff an opportunity to protect any of his property not creating the nuisance. Further, the City does not have the authority to violate its own authority in the plaintiff to comply with a lawfully issued building permit. Particularly a permit which, by its very terms, displays a necessary excavation immediately adjacent to to the City paved right of way. Finally, it is an abuse of authority to threaten the plaintiff with arrest if he attempts to lawfully protect his own property.

It is hereby ORDERED:

The City of Gardiner and its City Manager is hereby ENJOINED from interfering with the lawful exercise by Peter Wlodylo and his family of their rights under a BUILDING PERMIT #06-BP-071 issued June 12, 2006 by David P. Cichowski; in the event the defendants have evidence that the plaintiff's activities under the permit create a nuisance or otherwise endanger the health and welfare of the citizens of the City, this court retains jurisdiction to hear and provide relief to either party during the term of the injunction; this preliminary injunction will expire August 3, 2007 at 4:00 o'clock pm unless otherwise terminated by this court.

The clerk may docket this ORDER by reference.

July 2, 2007 at 12:30 pm.



JUSTICE, SUPERIOR COURT