

EXHIBIT 6 - continued

Court Ordered Injunction of Town's "Free Air Law"
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On September 26, 2017, the Court determined to grant leave to plaintiffs to file a second amended complaint, but the Court struck the provision temporarily restraining defendants from enforcing any provision of the 2017 Resolution pending the hearing and determination of the instant motion.

The second amended complaint seeks, *inter alia*, declarations that Resolution Nos. 1007-2016 and 345-2017 enacting and amending Section 336.G(3) of the Town's Building Zone Ordinance (BZO) are illegal, invalid, null, void and unconstitutional, that the State of New York has preempted the field on the issue, and for preliminary and permanent injunctions restraining the defendants from enforcing those Resolutions against plaintiffs and any other gasoline service stations located in the Town.

Resolution 345-2017 provides in relevant part that "coin-operated or other for profit air compressor units are prohibited," that air "shall be provided at no charge to the user, customer or patron, at all times that the gasoline service station is open for business," and there is language requiring a gauge displaying the pounds per square inch also included in the Town's 2017 amendment to BZO 336.G(3). The amendment became effective on October 1, 2017.¹ Even as amended, plaintiffs contend that BZO Section 336.G(3) "still suffers from all other objectionable aspects of the 2016 Resolution which render it fatally deficient," that the Town "is still abusing and misusing its zoning laws," by banning and criminalizing the possession and operation of coin-operated air machines that are "standard throughout New York State and allowed under New York State Law."

The decision to grant or deny a request for preliminary injunctive relief rests in the sound discretion of the trial court (*Butt v. Malik*, 106 AD3d 849, 850 [2d Dept 2013]; *Matter of 1650 Realty Assoc., LLC v. Golden Touch Mgt., Inc.*, 101 AD3d 1016, 1018 [2d Dept 2012]; *Arcamone-Makinano v. Britton Property Inc.*, 83 AD3d 623 [2d Dept 2011]). The existence of factual disputes will not preclude the granting of a preliminary injunction (*Matter of 1650 Realty Assoc., LLC, supra*; *Arcamone-Makinano, supra*).

A party seeking preliminary injunctive relief "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor" (see *Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]; *Doe v. Axelrod*, 73 NY2d 748, 750 [1988]; *Glauber v. G&G Quality Clothing, Inc.*, 134 AD3d 898, 899 [2d Dept 2015]). The moving party must make this demonstration by clear and convincing evidence (*S.J.J.K. Tennis, Inc. v. Confer Bethpage, LLC*, 81 AD3d 629 [2d Dept 2011]). Thus, the purpose of a

¹ The earlier Resolution 1007-2016 required that the air be provided at no charge twenty-four hours a day, seven days a week, for 365 days per year. By Short Form Order dated January 5, 2017, this Court determined that plaintiffs met the test for preliminary injunctive relief based upon a violation of the Open Meetings Law.