

FAN

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----X

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

ORDER

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Assigned Justice:
Francis A. Nicolai

Defendants.

**FILED
AND
ENTERED**
ON Sept. 14 2011
WESTCHESTER
COUNTY CLERK

FILED
SEP 14 2011
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----X

Defendant, The Nature Conservancy ("Defendant") having appealed to the Supreme Court, Appellate Division, Second Judicial Department from an order of this Court dated May 27, 2011 ("May Order"), which granted the motion by Plaintiff Seven Springs, LLC ("Plaintiff") for summary judgment for the relief demanded in its Amended Complaint, and Defendant having moved the Appellate Division for an order staying enforcement of this Court's May Order and to enjoin Plaintiff "from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal"; and the Appellate Division having granted Defendant's Motion, by Order dated July 22, 2011 (a copy of which is annexed hereto), in which that Court, *inter alia*, (A) enjoined Plaintiff "from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal, on condition that (1) the appeal is perfected on or before August 22, 2011, and (2) [Defendant] post

an undertaking with corporate surety in the office of the Clerk of the Supreme Court, Westchester County, in a sum to be fixed by the Supreme Court, Westchester County, in terms that if the order appealed from, or any part of it, is affirmed, the surety will indemnify [Plaintiff] if it is ultimately determined that [Plaintiff] sustained a loss due to the injunction;” and (B) remitted the matter to the Supreme Court, Westchester County to fix the amount of the undertaking to be posted by Defendant in accordance therewith; and the matter having come on before this Court for a hearing thereon on August 22, 2011, at which time the parties were represented by their respective counsel Cohn & Spector (Julius W. Cohn, of counsel), for Plaintiff, and Benowich Law, LLP (Leonard Benowich, of counsel) for Defendant; and the parties having agreed, on the record of the proceedings, that Defendant would post an undertaking in the amount of \$750,000.00;

NOW, THEREFORE, it is hereby

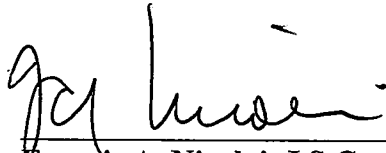
ORDERED, that the amount of the undertaking to be posted by Defendant be and the same hereby is fixed in the amount agreed upon by the parties, the same being \$750,000.00; and it is further

ORDERED, that Defendant shall post an undertaking in the amount of \$750,000 with a corporate surety in the office of the Clerk of the Supreme Court, Westchester County upon the terms that if the May Order of this Court or any part of it, is affirmed, the surety will indemnify Plaintiff if it is ultimately determined that Plaintiff sustained a loss due to the injunction; and it is further

ORDERED, that Defendant shall post said undertaking within fifteen (15) days after service upon it of a copy of this Order with notice of entry.

Dated: White Plains, New York
August 25, 2011

ENTER :

A handwritten signature in cursive script, appearing to read "Francis A. Nicolai", written over a horizontal line.

Francis A. Nicolai, J.S.C.

Seven Springs, LLC v Nature Conservancy
Motion No: 2011-05761
Slip Opinion No: 2011 NY Slip Op 79115(U)
Decided on July 22, 2011
Appellate Division, Second Department, Motion Decision
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This motion is uncorrected and is not subject to publication in the Official Reports.

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

M123016

E/sl

REINALDO E. RIVERA, J.P.

ANITA R. FLORIO

THOMAS A. DICKERSON

SHERI S. ROMAN, JJ.

2011-05761

Seven Springs, LLC, respondent, v
Nature

Conservancy, appellant, et al.,
defendants.

(Index No. 06-9130)

DECISION & ORDER ON MOTION

Motion by the appellant on an appeal from an order of the Supreme Court, Westchester County, dated May 27, 2011, to stay enforcement of the order and to enjoin the respondent from entering upon land owned by the appellant with any vehicle, equipment, or machinery, or performing any work upon land owned by the appellant, except that the appellant may conduct land surveys using hand-carried

equipment, pending hearing and determination of the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is granted, enforcement of the order is stayed, and the respondent is enjoined from entering upon land owned by the appellant with any vehicle, equipment, or machinery, or performing any work upon land owned by the appellant, except that the appellant may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal, on condition that (1) the appeal is perfected on or before August 22, 2011, and (2) the appellant post an undertaking with corporate surety in the office of the Clerk of the Supreme Court, Westchester County, in a sum to be fixed by the Supreme Court, Westchester County, in terms that if the order appealed from, or any part of it, is affirmed, the surety will indemnify the respondent if it is ultimately determined that the respondent sustained a loss due to the injunction; and it is further,

ORDERED that the matter is remitted to the Supreme Court, Westchester County, to fix the amount of the undertaking in accordance herewith; the appellant shall file the undertaking within 15 days after service upon it of a copy of the order of the Supreme Court, Westchester County, fixing the amount thereof; and it is further,

ORDERED that in the event that the appeal is not perfected or the undertaking is not posted in accordance with this order, the Court, on its own motion, may vacate the stay and the injunction, or the respondent may move to vacate the stay and the injunction, on three days notice.

RIVERA, J.P., FLORIO, DICKERSON and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan

Clerk of the Court

NOT POSTAL

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----X
SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OR NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

ORDER



Benowich
BENOWICH LAW, LLP
1025 Westchester Avenue
White Plains, New York 10604
(914) 946-2400
Attorneys for Defendant The Nature Conservancy

To

Service of a copy of the within is hereby admitted.

Dated:.....

Attorney(s) for

.....



1. Place cover this side up on top of first page of document. Staple as indicated.



2. Lift bottom of cover up and over top, folding on top score line



3. Fold cover down behind papers on remaining score line.



STATE OF

COUNTY OF

ss.:

I, the undersigned, an attorney admitted to practice law,

- Check Applicable Box
- Certification By Attorney
 - Attorney's Affirmation

certify that the within has been compared by me with the original and found to be a true and complete copy.
state that I am

the attorney(s) of record for in the within action; I have read the foregoing and know the contents thereof: the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF

COUNTY OF

ss.:

- Check Applicable Box
- Individual Verification
 - Corporate Verification

I, the foregoing my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

being duly sworn, depose and say: I am in the within action: I have read and know the contents thereof: the same is true to

the of a corporation and a party in the within action; I have read the foregoing and know the contents thereof: and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

.....
The name signed must be printed beneath

STATE OF

COUNTY OF

ss.: (If both boxes are checked—indicate after names, type of service used.)

I, of age and reside at

being sworn, say: I am not a party to the action, am over 18 years

- Check Applicable Box
- Service By Mail
 - Personal Service on Individual

On I served the within by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within this State, addressed to each of the following persons at the last known address set forth after each name:

by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

Sworn to before me on

.....
The name signed must be printed beneath

August 23, 2011

Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604
T (914) 946-2400
F (914) 946-9474
benowichlaw.com

Benowich

Hon. Francis A. Nicolai
Justice of the Supreme Court
Supreme Court, Putnam County
20 County Center
Carmel, NY 10512

**Re: Seven Springs v. The Nature Conservancy, et al.
Westchester County Index No.: 9130/06**

Dear Justice Nicolai:

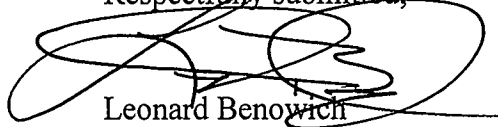
This firm is counsel for Defendant The Nature Conservancy.

Enclosed please find our proposed counter-order with respect to the hearing held yesterday to fix the amount of the undertaking to be given by The Nature Conservancy to secure the preliminary injunction pending appeal issued by the Appellate Division in this case.

Enclosed is our form of counter-order, together with a redline or marked-up version showing the changes we have made compared with Mr. Cohn's proposed order.

Also enclosed is a self-addressed envelope.

Respectfully submitted,



Leonard Benowich

LB/gpb
Enc.

cc: Julius Cohn, Esq. (by mail)
Hans Birle, Esq. (by e-mail)

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

ORDER

-against-

THE NATURE CONSERVANCY, REALIS _____ Assigned Justice:
ASSOCIATES, THE TOWN OF NORTH CASTLE, _____ Francis A. Nicolai
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.

Defendant, The Nature Conservancy ("Defendant") having appealed to the Supreme Court, Appellate Division, Second Judicial Department from an order of this Court dated May 27, 2011 ("May Order"), which granted the motion by Plaintiff, Seven Springs, LLC ("Plaintiff") for summary judgment for the relief demanded in its Amended Complaint, and Defendant having moved the Appellate Division for an order staying enforcement of this Court's May Order and to enjoin Plaintiff "from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal"; and the Appellate Division having granted Defendant's Motion, by Order dated July 22, 2011 (a copy of which is annexed hereto), in which that Court, *inter alia*, (A) enjoined Plaintiff "from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal, on condition that (1) the appeal is perfected on or before August 22, 2011, and (2) [Defendant] post

Deleted:
Deleted: ing
Deleted: 's motion
Deleted: the
Deleted: , The Nature Conservancy,
Deleted: in
Formatted: Font: 12 pt

Formatted: Font: 12 pt
Deleted: to stay enforcement of said order of this Court and to enjoin the Respondent from entering upon land owned by said Def
Deleted: endant, and said motion having been decided and a Decision and Order thereon dated
Formatted: Font: Italic
Formatted: Font: 12 pt

an undertaking with corporate surety in the office of the Clerk of the Supreme Court, Westchester County, in a sum to be fixed by the Supreme Court, Westchester County, in terms that if the order appealed from, or any part of it, is affirmed, the surety will indemnify [Plaintiff] if it is ultimately determined that [Plaintiff] sustained a loss due to the injunction;" and (B) remitted the matter to the Supreme Court, Westchester County to fix the amount of the undertaking to be posted by Defendant in accordance therewith; and the matter having come on before this Court for a hearing thereon on August 22, 2011, at which time the parties were represented by their respective counsel Cohn & Spector (Julius W. Cohn, of counsel), for Plaintiff, and Benowich Law, LLP (Leonard Benowich, of counsel) for Defendant; and the parties having agreed, on the record of the proceedings, that Defendant would post an undertaking in the amount of \$750,000.00;

Deleted: having been issued by the Appellate Division and said Court having
 Deleted:
 Deleted: the Appellate Division's Order of July 22, 2011

Deleted: and this Court having taken testimony before it on said date and the parties having mutually agreed to

NOW, THEREFORE, it is hereby

Formatted: Font: Bold
 Formatted: Indent: First line: 36 pt
 Deleted: ,
 Deleted: fix
 Deleted: ed by this Court be and the same is hereby set

ORDERED, that the amount of the undertaking to be posted by Defendant be and the same hereby is fixed in the amount agreed upon by the parties, the same being \$750,000.00; and it is further

Formatted: Font: Bold
 Deleted:
 Deleted: and the
 Deleted: , The Nature Conservancy,
 Deleted: C
 Deleted: S

ORDERED, that Defendant shall post an undertaking in the amount of \$750,000 with a corporate surety in the office of the Clerk of the Supreme Court, Westchester County upon the terms that if the May Order of this Court or any part of it, is affirmed, the surety will indemnify Plaintiff if it is ultimately determined that Plaintiff sustained a loss due to the injunction, and it is further

Deleted: Order of the Supreme Court, Westchester County, upon the terms that if the Order of the Supreme Court, Westchester County dated May 27, 2011 (the same being the Order appealed from)
 Deleted: the
 Deleted: (Respondent on the Appeal) Seven Springs, LLC
 Deleted: said
 Deleted: /Respondent Seven Springs, LLC
 Deleted: ,
 Formatted: Indent: First line: 36 pt

ORDERED, that Defendant shall post said undertaking within fifteen (15) days after service upon it of a copy of this Order with notice of entry.

Deleted: the
Deleted: Plaintiff/Appellant The Nature Conservancy
Deleted: file
Deleted: ¶

Dated: White Plains, New York
August __, 2011

ENTER:

Francis A. Nicolai, J.S.C.,

Deleted: ¶
¶
¶
¶
¶
Formatted: Tabs: -60 pt, Left + -36 pt, Left + 0 pt, Left + 49.5 pt, Left + 72 pt, Left + 108 pt, Left + 144 pt, Left + 180 pt, Left + 216 pt, Left + 252 pt, Left + 288 pt, Left + 324 pt, Left + 360 pt, Left + 396 pt, Left + 432 pt, Left + 468 pt, Left + 504 pt, Left + 540 pt, Left + 576 pt, Left + 612 pt, Left + 648 pt, Left + 684 pt, Left + 720 pt, Left + 756 pt, Left + 792 pt, Left + 828 pt, Left + 864 pt, Left + 900 pt, Left + 936 pt, Left
Formatted: Font: Bold
Deleted:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

ORDER

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

Defendant, The Nature Conservancy, having appealed to the Supreme Court, Appellate Division, Second Judicial Department from an Order of this Court dated May 27, 2011 granting Seven Springs, LLC's motion for summary judgment and the Defendant, The Nature Conservancy, having moved in the Appellate Division to stay enforcement of said Order of this Court and to enjoin the Respondent from entering upon land owned by said Defendant, and said motion having been decided and a Decision and Order thereon dated July 22, 2011 having been issued by the Appellate Division and said Court having remitted the matter to the Supreme Court, Westchester County to fix the amount of the undertaking in accordance with the Appellate Division's Order of July 22, 2011 and the matter having come on before this Court for a hearing thereon on August 22, 2011 and this Court having taken testimony before it on said date and the parties having mutually agreed to an undertaking in the amount of \$750,000.00, it is

ORDERED, that the amount of the undertaking to be fixed by this Court be and the same is hereby set in the amount agreed upon by the parties, the same being \$750,000.00 and the Defendant, The Nature Conservancy, shall post an undertaking with Corporate Surety in the office of the Clerk of the Supreme

Court, Westchester County upon the terms that if the Order of the Supreme Court, Westchester County, dated May 27, 2011 (the same being the Order appealed from) or any part of it is affirmed, the surety will indemnify the Plaintiff (Respondent on the Appeal) Seven Springs, LLC if it is ultimately determined that said Plaintiff/Respondent Seven Springs, LLC sustained a loss due to the injunction, and it is further

ORDERED, that the Plaintiff/Appellant The Nature Conservancy shall file said undertaking within fifteen (15) days after service upon it of a copy of this Order.

Dated: White Plains, New York
August ____, 2011

ENTER:

J.S.C.

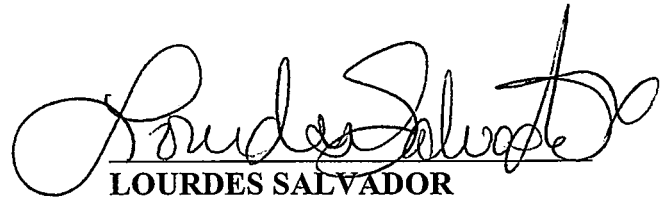
**Hon. Francis A. Nicolai
Supreme Court Justice**

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

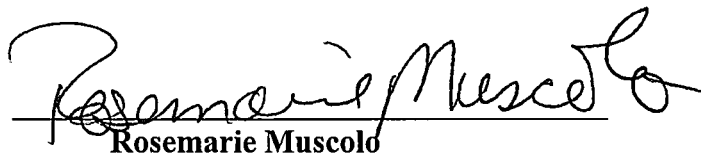
LOURDES SALVADOR, being duly sworn, deposes and says:

That I am over the age of 18 and not a party to the within action; that I reside in Middletown, New York, that on August 22, 2011, I served the within **ORDER**, by mailing same in a sealed envelope with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed as follows:

TO: Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604


LOURDES SALVADOR

Sworn to before me this
22nd day of August, 2011



Rosemarie Muscolo

Notary Public, State of New York
4753358

Qualified in Westchester County
Commission Expires February 28, 2014

COHN & SPECTOR
ATTORNEYS AT LAW

JULIUS W. COHN*
WAYNE H. SPECTOR

200 EAST POST ROAD
WHITE PLAINS, NEW YORK 10601-4959
(914) 428-0505

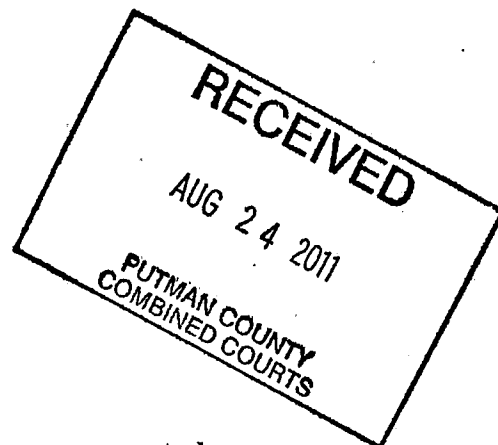
FACSIMILE: (914) 428-0519
EMAIL: jcohn@cohn-spector.com

Firm Founded 1971 as
Cerrato, Sweeney & Cohn
Thereafter:
Cerrato Sweeney Cohn Stahl & Vaccaro
Thereafter:
Sweeney Cohn Stahl Spector & Frank

Also admitted in Florida*

August 22, 2011

Hon. Francis A. Nicolai
Justice of the Supreme Court
Putnam County Courthouse
44 Gleneida Avenue
Carmel, NY 10512



**Re: Seven Springs, LLC v. The Nature Conservancy, et al.
Supreme Court, Westchester County Index No.: 9130/06**

Dear Judge Nicolai:

Enclosed herewith please find a proposed Order fixing the amount of the undertaking in the above action as agreed upon between the parties during a hearing held before you on August 22, 2011.

A postpaid envelope is enclosed for a copy of the executed Order, if the same issues. We are also enclosing a copy of the Order for that purpose.

Very truly yours,

COHN & SPECTOR

By: 

Julius W. Cohn

JWC/lis

cc: Seven Springs, LLC (w/enc.)
Benowich Law, LLP (w/enc.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

ORDER

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

Defendant, The Nature Conservancy, having appealed to the Supreme Court, Appellate Division, Second Judicial Department from an Order of this Court dated May 27, 2011 granting Seven Springs, LLC's motion for summary judgment and the Defendant, The Nature Conservancy, having moved in the Appellate Division to stay enforcement of said Order of this Court and to enjoin the Respondent from entering upon land owned by said Defendant, and said motion having been decided and a Decision and Order thereon dated July 22, 2011 having been issued by the Appellate Division and said Court having remitted the matter to the Supreme Court, Westchester County to fix the amount of the undertaking in accordance with the Appellate Division's Order of July 22, 2011 and the matter having come on before this Court for a hearing thereon on August 22, 2011 and this Court having taken testimony before it on said date and the parties having mutually agreed to an undertaking in the amount of \$750,000.00, it is

ORDERED, that the amount of the undertaking to be fixed by this Court be and the same is hereby set in the amount agreed upon by the parties, the same being \$750,000.00 and the Defendant, The Nature Conservancy, shall post an undertaking with Corporate Surety in the office of the Clerk of the Supreme

Court, Westchester County upon the terms that if the Order of the Supreme Court, Westchester County, dated May 27, 2011 (the same being the Order appealed from) or any part of it is affirmed, the surety will indemnify the Plaintiff (Respondent on the Appeal) Seven Springs, LLC if it is ultimately determined that said Plaintiff/Respondent Seven Springs, LLC sustained a loss due to the injunction, and it is further

ORDERED, that the Plaintiff/Appellant The Nature Conservancy shall file said undertaking within fifteen (15) days after service upon it of a copy of this Order.

Dated: White Plains, New York
August ____, 2011

ENTER :

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.

ORDER

COHN & SPECTOR

Attorneys for Plaintiff
200 EAST POST ROAD
WHITE PLAINS, N. Y 10601-4959
Tel.: (914) 428-0505 Fax: (914) 428-0519

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: _____

Signature _____

Print Signer's Name _____

Service of a copy of the within _____ is hereby admitted.

Dated: _____

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF
ENTRY

*that the within is a true copy of a
entered in the office of the clerk of the within named Court on _____, 2011.*

NOTICE OF
SETTLEMENT

*that a _____ of which the within is a true copy will be presented for settlement to the
at _____ on _____, 2011, at _____ a.m./p.m.*

Dated: *White Plains, New York
August 22, 2011*

COHN & SPECTOR
200 EAST POST ROAD
WHITE PLAINS, N. Y 10601-4959

Attorney(s) for Stated Plaintiff

July 28, 2011

Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604
T (914) 946-2400
F (914) 946-9474
benowichlaw.com

Benowich

By: Fax

Hon. Francis A. Nicolai
Justice of the Supreme Court
Supreme Court, Putnam County
20 County Center
Carmel, NY 10512

Re: Seven Springs v. The Nature Conservancy, et al.
Westchester County Index No.: 9130/06

Dear Justice Nicolai:

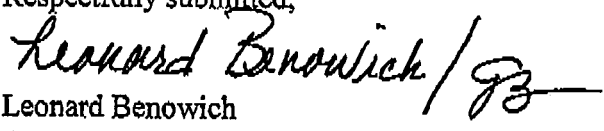
This firm is counsel for Defendant The Nature Conservancy. We write in response to Mr. Cohn's letter dated July 27, 2011, requesting a briefing and argument schedule with respect to the fixing of an undertaking in connection with the injunction granted by the Appellate Division.

First, we believe that the fixing of any undertaking should be after an evidentiary hearing at which Plaintiff's witnesses will be required to testify as to the damages Plaintiff believes it will sustain. Because there has been no discovery on this important issue, Defendant will be at a distinct disadvantage on the motion absent an evidentiary hearing.

Accordingly, subject to the Court's (and counsel's) schedule, we would be prepared to attend a hearing during the week of August 15, 2011 or as soon thereafter as may be convenient to the Court and counsel.

This letter is being signed by my secretary in my absence, as I am out of the country until next week.

Respectfully submitted,


Leonard Benowich
(Dictated but not read)

LB/gpb
Enc.

cc: Julius Cohn, Esq. (by fax)
Lois Rosen, Esq. (by fax)

Benowich
BENOWICH LAW, LLP
 1025 Westchester Avenue
 White Plains, New York 10604
 Tel: (914) 946-2400
 Fax: (914) 946-9474

FACSIMILE TRANSMITTAL COVER SHEET

FROM: Leonard Benowich, Esq.
 DATE: July 28, 2011 No. Pages 2 (including cover)
 RE: Seven Springs v. TNC
 Index No.: 9130/06

To: Hon. Francis A. Nicolai Firm: Supreme Court - Westchester County Fax: (845) 228-9617	To: Stuart Kahan/Lois Rosen, Esqs. Firm: Oxman, Tulis Kirkpatrick Fax: (914) 422-3636
To: Julius W. Cohn, Esq. Firm: Cohn & Spector Fax: (914) 428-0519	To: Firm: Fax:

Comments:

The information contained on this facsimile message is attorney-client privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone and return the original to us at Suite 100, 1025 Westchester Avenue, White Plains, New York 10604 via the United States Postal Service.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----x
SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

ORDER

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Assigned Justice:
Francis A. Nicolai

Defendants.
-----x

Defendant, The Nature Conservancy (“Defendant”) having appealed to the Supreme Court, Appellate Division, Second Judicial Department from an order of this Court dated May 27, 2011 (“May Order”), which granted the motion by Plaintiff Seven Springs, LLC (“Plaintiff”) for summary judgment for the relief demanded in its Amended Complaint, and Defendant having moved the Appellate Division for an order staying enforcement of this Court’s May Order and to enjoin Plaintiff “from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal”; and the Appellate Division having granted Defendant’s Motion, by Order dated July 22, 2011 (a copy of which is annexed hereto), in which that Court, *inter alia*, (A) enjoined Plaintiff “from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal, on condition that (1) the appeal is perfected on or before August 22, 2011, and (2) [Defendant] post

an undertaking with corporate surety in the office of the Clerk of the Supreme Court, Westchester County, in a sum to be fixed by the Supreme Court, Westchester County, in terms that if the order appealed from, or any part of it, is affirmed, the surety will indemnify [Plaintiff] if it is ultimately determined that [Plaintiff] sustained a loss due to the injunction;" and (B) remitted the matter to the Supreme Court, Westchester County to fix the amount of the undertaking to be posted by Defendant in accordance therewith; and the matter having come on before this Court for a hearing thereon on August 22, 2011, at which time the parties were represented by their respective counsel Cohn & Spector (Julius W. Cohn, of counsel), for Plaintiff, and Benowich Law, LLP (Leonard Benowich, of counsel) for Defendant; and the parties having agreed, on the record of the proceedings, that Defendant would post an undertaking in the amount of \$750,000.00;

NOW, THEREFORE, it is hereby

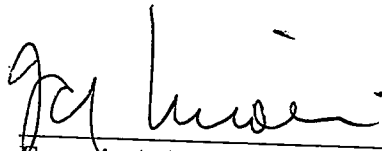
ORDERED, that the amount of the undertaking to be posted by Defendant be and the same hereby is fixed in the amount agreed upon by the parties, the same being \$750,000.00; and it is further

ORDERED, that Defendant shall post an undertaking in the amount of \$750,000 with a corporate surety in the office of the Clerk of the Supreme Court, Westchester County upon the terms that if the May Order of this Court or any part of it, is affirmed, the surety will indemnify Plaintiff if it is ultimately determined that Plaintiff sustained a loss due to the injunction; and it is further

ORDERED, that Defendant shall post said undertaking within fifteen (15) days after service upon it of a copy of this Order with notice of entry.

Dated: White Plains, New York
August 25, 2011

ENTER:



Francis A. Nicolai, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----x
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----x

Index No. 9130/06

ORDER

Assigned Justice:
Francis A. Nicolai

Defendant, The Nature Conservancy (“Defendant”) having appealed to the Supreme Court, Appellate Division, Second Judicial Department from an order of this Court dated May 27, 2011 (“May Order”), which granted the motion by Plaintiff Seven Springs, LLC (“Plaintiff”) for summary judgment for the relief demanded in its Amended Complaint, and Defendant having moved the Appellate Division for an order staying enforcement of this Court’s May Order and to enjoin Plaintiff “from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal”; and the Appellate Division having granted Defendant’s Motion, by Order dated July 22, 2011 (a copy of which is annexed hereto), in which that Court, *inter alia*, (A) enjoined Plaintiff “from entering upon land owned by [Defendant] with any vehicle, equipment, or machinery, or performing any work upon land owned by [Defendant], except that [Plaintiff] may conduct land surveys using hand-carried equipment, pending hearing and determination of the appeal, on condition that (1) the appeal is perfected on or before August 22, 2011, and (2) [Defendant] post

an undertaking with corporate surety in the office of the Clerk of the Supreme Court, Westchester County, in a sum to be fixed by the Supreme Court, Westchester County, in terms that if the order appealed from, or any part of it, is affirmed, the surety will indemnify [Plaintiff] if it is ultimately determined that [Plaintiff] sustained a loss due to the injunction;" and (B) remitted the matter to the Supreme Court, Westchester County to fix the amount of the undertaking to be posted by Defendant in accordance therewith; and the matter having come on before this Court for a hearing thereon on August 22, 2011, at which time the parties were represented by their respective counsel Cohn & Spector (Julius W. Cohn, of counsel), for Plaintiff, and Benowich Law, LLP (Leonard Benowich, of counsel) for Defendant; and the parties having agreed, on the record of the proceedings, that Defendant would post an undertaking in the amount of \$750,000.00;

NOW, THEREFORE, it is hereby

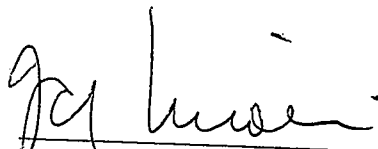
ORDERED, that the amount of the undertaking to be posted by Defendant be and the same hereby is fixed in the amount agreed upon by the parties, the same being \$750,000.00; and it is further

ORDERED, that Defendant shall post an undertaking in the amount of \$750,000 with a corporate surety in the office of the Clerk of the Supreme Court, Westchester County upon the terms that if the May Order of this Court or any part of it, is affirmed, the surety will indemnify Plaintiff if it is ultimately determined that Plaintiff sustained a loss due to the injunction; and it is further

ORDERED, that Defendant shall post said undertaking within fifteen (15) days after service upon it of a copy of this Order with notice of entry.

Dated: White Plains, New York
August 25, 2011

ENTER :



Francis A. Nicolai, J.S.C.

TRANSMISSION VERIFICATION REPORT

TIME : 08/25/2011 11:53
NAME : SUPREME CT CHAMBERS
FAX : 845-228-9617
TEL :
SER.# : BROM7J749637

DATE, TIME	08/25 11:52
FAX NO./NAME	19149469474
DURATION	00:00:37
PAGE(S)	04
RESULT	OK
MODE	STANDARD ECM

TRANSMISSION VERIFICATION REPORT

TIME : 08/25/2011 11:54
NAME : SUPREME CT CHAMBERS
FAX : 845-228-9617
TEL :
SER.# : BROM7J749637

DATE, TIME	08/25 11:53
FAX NO./NAME	19144280519
DURATION	00:00:35
PAGE(S)	04
RESULT	OK
MODE	STANDARD ECM