

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ROCKLAND  
HON. ROBERT M. BERLINER, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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In the Matter of the Application of

ERIC TAYLOR and TARA TAYLOR,

DECISION and ORDER

Petitioners,

-against-

Index No.: 033738/2021

TOWN OF RAMAPO ZONING BOARD OF APPEALS and HILLSIDE MIKVAH,

Respondents.

Motion Sequence #5

For a Judgment Pursuant to New York Civil Practice Law and Rules §78101, *et sq.*

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The papers submitted before the Court, NYSCEF Doc. Nos. 69-78, were read on Petitioners’ motion for a preliminary injunction.

Upon the foregoing papers, it is ORDERED that this motion is disposed of as follows:

Petitioners commenced this CPLR Article 78 proceeding requesting the Court to annul a decision by the Respondent Town of Ramapo Zoning Board of Appeals’ (“Respondent ZBA”) with respect to certain real property located in the Town of Ramapo. Pursuant to a Decision and Order dated December 10, 2021, this Court granted the Respondent ZBA’s motion to dismiss the application for lack of personal jurisdiction. Now before the Court is Petitioners’ motion for a preliminary injunction.

CPLR § 6301 authorizes the court to issue a preliminary injunction or temporary restraining order. As recognized by courts of this State, “the plain language of CPLR § 6301 makes clear, the pendency of an action is an indispensable prerequisite to the granting of a preliminary or temporary injunction.” *Lynn v Sterling Natl. Bank*, 151 AD3d 1049 [2d Dept 2017][internal citations and quotation marks omitted]. Respondents correctly contend that this

Court has no authority to issue a preliminary injunction as this proceeding was dismissed and is disposed. Petitioners' argument to the contrary is unavailing. While they rely on CPLR § 5519(c), the same applies to a court's authority of issuing a *stay of proceedings to enforce* a judgment or order being appealed. This proceeding has been dismissed by the Court. There are no proceedings at issue so as to "enforce" the December 10, 2021 Decision and Order. Contrary to Petitioners' position, CPLR § 5519 is not a workaround the statutory requirement that an action be pending before the court in order to issue a preliminary or temporary injunction.

Based upon the foregoing it is,  
ORDERED that Petitioners' motion for a preliminary injunction is denied in its entirety.  
The foregoing constitutes the Decision, Order, and Judgment of the Court.

Dated: New City, New York  
July 15, 2022

ENTER

  
HON. ROBERT M. BERLINER, J.S.C.

To:  
Counsel of record via NYSCEF