

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 6 - SUFFOLK COUNTY

**P R E S E N T:**

Hon. Gary J. Weber MOTION DATE March 18, 2009  
Acting Justice of the Supreme Court Motion Seq. #005 - MD

HUNTER SPORTS SHOOTING GROUNDS, INC.,

Plaintiff(s)

-against-

BRIAN X. FOLEY, STEVE FIORE-FORSENFELD,  
KEVIN T. MCCARRICK, KATHLEEN WALSH,  
CONNIE KEPERT, CAROL BISSONETTE, and  
TIMOTHY P. MAZZEI, constituting the TOWN BOARD  
OF THE TOWN OF BROOKHAVEN, and the COUNTY  
OF SUFFOLK, as a Necessary Party Pursuant to Civil  
Practice Law and Rules 1001(a),

Defendant(s)

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This is an order to show cause brought on by the defendant County of Suffolk (hereinafter Suffolk) seeking to vacate an order of this court dated January 30, 2009 and entered on February 10, 2009 to vacate any default of Suffolk and for re-argument.

In rendering the determination which follows the court has read and considered the following items:

1. The Order to Show Cause dated March 18, 2009 which was originally returnable April 15, 2009 and its supporting papers together with Volumes One and Two of Exhibits in support each dated March 178, 2009.
2. The Affirmation of Andrew L. Crabtree, Esq. on behalf of Hunter Sports Shooting Grounds, Inc. (hereinafter "Hunter") dated April 8, 2009.
3. The affirmation of Paul F. Miller, Esq. dated April 8, 2009 on behalf of the Town of Brookhaven and its defendants (hereinafter "Brookhaven") and a Memorandum of Law dated April 8, 2009.
4. Reply Affirmation of John R. Petrowski, Esq. on behalf of Suffolk dated April 21, 2009.

## THE APPLICATION

The subject decision and order of the Court dated January 30, 2009 was made and entered without participation by Suffolk beyond that of filing an answer in the case.

Suffolk now moves to vacate that decision and order citing authority relating to vacating of a default.

## ANALYSIS

This is not the classic default situation where the defaulting party comes forward with some reasonable cause for excuse in failing to plead, or take some other procedural step in a timely fashion.

Here, Suffolk goes so far as to affirmatively allege that it took no further part in the proceedings beyond that of a filing an answer for strategic reasons.

Whether Suffolk was in default, or should be held to be in default, is really not a significant consideration in so far as this litigation is concerned - at least at this juncture.

As the decision of January 30, 2009 made clear, Hunter is but a creature of Suffolk in so far as the use of this subject property is concerned. Hunter has only a license agreement for the property, which Suffolk can terminate at any time, for reasons which Suffolk, in its sole discretion, may deem sufficient.

Presently, the only party before the Sixth District Court is Hunter, but Suffolk is the entity which is controlling the property through the license agreement. This is the opposite of the situation where a landlord has no control of the property because the terms of a lease cedes dominion of it to the tenant. Here, Hunter has only a "license" which puts Suffolk literally in the "Driver's Seat" in so far as the property is concerned.

The Suffolk County Sixth District Court is where these noise violations should initially be contested and litigated as between all of the true parties in interest, which most definitely includes Suffolk as it is Suffolk which can dictate under what terms, if any, Hunter can remain on this property and operate it as a shooting range.

## ORDER

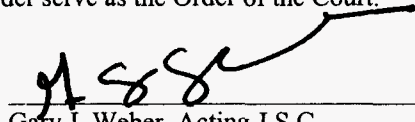
**IT IS ORDERED**, that the instant application is in all respects denied; and it is further

**ORDERED**, that any stay contained in the Order to Show Cause dated March 18, 2009 is hereby dissolved; and it is further

**ORDERED**, that the attorneys for defendant, Brookhaven, serve a copy of this decision and order on all other appearing attorneys with all convenient speed; and it is further

**ORDERED**, that this Memorandum Decision and Order serve as the Order of the Court.

Dated: June 3, 2009

  
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Gary J. Weber, Acting J.S.C.

Non-Final Disposition  
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