

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus and Order to Show Cause,

THE NONHUMAN RIGHTS PROJECT, INC., on
behalf of HAPPY,

Petitioner-Appellant,

-against-

JAMES J. BREHENY, in his official capacity as Executive
Vice President and General Director of Zoos and
Aquariums of the Wildlife Conservation Society and
Director of the Bronx Zoo, and WILDLIFE
CONSERVATION SOCIETY,

Respondents-Respondents.

Index No.: 18-45164

(Supreme Court, Orleans
County)

**NOTICE OF MOTION
FOR PERMISSION
TO APPEAL AND
STAY**

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Kevin Schneider, Esq., an attorney of record for Petitioner-Appellant, the Nonhuman Rights Project, Inc. (“NhRP”), in support of Petitioner-Appellant’s Notice of Motion for Permission to Appeal and Stay, dated March 22, 2019; the annexed Memorandum of Law in support of the NhRP’s Notice of Motion for Permission to Appeal and Stay, dated March 22, 2019; the January 18, 2019 order of the Supreme Court, Orleans County (“lower court”) which granted the Respondents-Respondents’ motion to change venue from Orleans County to Bronx County,

entered and filed in the office of the clerk of Orleans County on January 23, 2019 (“Transfer Order”); the February 21, 2019 order of the lower court which reaffirmed the Transfer Order and, *inter alia*, (a) denied the NhRP’s motion for leave to reargue the Transfer Order, (b) denied the NhRP’s motion for permission to appeal the Transfer Order, (c) denied as moot the NhRP’s motion for a stay pending reargument of the Transfer Order, and (d) denied as moot the NhRP’s motion for a stay pending any appeal from the Transfer Order, entered and filed in the office of the clerk of Orleans County on February 26, 2019 (“Reargument Order”); and upon all prior pleadings, memoranda, demands, affidavits, exhibits, and attachments filed in this matter; the undersigned will move this Court at a Term for motions to be held at the Supreme Court of the State of New York Appellate Division, Fourth Judicial Department, 50 East Avenue, Suite 200, Rochester, New York 14604, on April 1, at 10:00 a.m., or as soon thereafter as counsel can be heard, for the following relief:

- (1) pursuant to CPLR 5701(c), an order granting the NhRP’s motion for permission to appeal from (a) that part of the Reargument Order reaffirming upon reargument, the Transfer Order; or, in the alternative, from (b) the Transfer Order, upon the ground that the lower court made material errors of law in ordering a transfer of venue which, in the interest of justice, warrant immediate review by this Court;

(2) pursuant to CPLR 5519(c), an order granting the NhRP's motion for a stay of enforcement of the Transfer Order pending final resolution of any appeal taken from the Reargument Order or, in the alternative, from the Transfer Order, upon the ground that there is a strong likelihood of success on the merits of an appeal, and that, without a stay, the transfer of venue to Bronx County could cause severe prejudice to Happy, while a stay will not cause any prejudice to the Respondents-Respondents; and

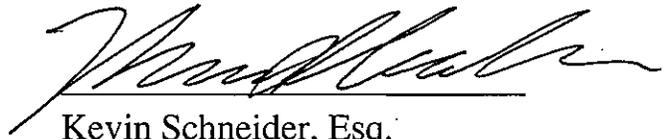
(3) such other and further relief as may be just, proper, and equitable.

On January 23, 2019, the NhRP filed a motion for leave to reargue the Transfer Order with the lower court ("Motion to Reargue"). On January 24, 2019, the NhRP filed a motion for permission to appeal the Transfer Order pursuant to CPLR 5701(c) should that court deny the Motion to Reargue or adhere to its prior decision. On February 5, 2019, the lower court held a telephonic hearing at which, among other issues, the motion for permission to appeal was litigated and denied, as reflected in the Reargument Order.

On January 8, 2019, the NhRP moved the lower court by order to show cause to stay its then-forthcoming transfer order until final resolution of the NhRP's then-forthcoming Motion to Reargue. On January 24, 2019, concurrently with the motion for permission to appeal the Transfer Order, the NhRP filed a motion pursuant to CPLR 2201 and 5519(c) to stay the Transfer Order until final resolution of any

appeal taken from the Transfer Order should the court deny its Motion to Reargue or adhere to its prior decision. These requested stays were denied as moot in the Reargument Order, as the lower court stayed the enforcement of the Transfer Order for not more than sixty days from entry of the aforesaid order.

Dated: March 22, 2019



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