

**ORIGINAL**

SHORT FORM ORDER

INDEX No. 200389/2022

CAL No. \_\_\_\_\_

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

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<p>TOWN OF ISLIP,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>777 CHRIS'S WAY LLC, and SLOTH ENCOUNTERS.COM LTD,</p> <p style="text-align: right;">Defendants.</p>	<p><b>MICHAEL P. WALSH, ESQ.</b> <b>ISLIP TOWN ATTORNEY</b> <b>BY: JEFFREY PANASCI, ESQ.</b> <i>Attorneys for Plaintiff</i> 655 MAIN ST ISLIP, NY 11751</p> <p><b>LAW OFFICES OF JOHN B. ZOLLO, P.C.</b> <i>Attorneys for Defendants</i> 12 MANOR RD SMITHTOWN, NY 11787</p>
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On June 22 and 26, 2023, a hearing was conducted before this Court to determine whether the defendants should be held in contempt for violation of this Court's March 30, 2023, Order which granted the plaintiff's motion for a preliminary injunction and directed the defendants "to immediately cease any operations that are a violation of the Town of Islip Code. Based upon a review of the evidence adduced at the hearing and after considering the contentions of the parties the Court makes the following findings of fact and decision after hearing.

FINDINGS OF FACT

Fire Marshall Daniel Petrarca was called as a witness by the plaintiff. On July 22, 2022, Petrarca was assigned to investigate a complaint alleging a change of use to an animal exhibit at a business located at 551 Veterans Memorial Highway, Hauppauge, New York. Petrarca reviewed Town of Islip and Suffolk County Clerk's Office records as related to the certificate of occupancy and the registered owner of the premises. Petrarca learned that the registered owner of the premises was 777 Chris's Way, LLC. The certificate of occupancy for that location was for a mercantile use and more specifically for a pool supply store.

Petrarca and an unidentified individual went to the location to conduct an inspection. Upon arrival, Petrarca observed a sign on the front of the premises that said "Sloth Encounters". Petrarca entered the premises and spoke to an individual identified as Larry Wallach. Petrarca observed a sloth hanging from a rack behind the front counter. He also noticed a USDA permit and a Suffolk County Department of Health

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permit (to operate a petting zoo), hanging on the wall. Petrarca conducted an inspection of the premises. Wallach also brought him to the "sloth habitat" where several sloths, (the only animals on the premises at that time), were in trees. On that date, notices of violation were issued to Wallach for uncovered electrical panels, lack of carbon monoxide alarms, lack of portable fire extinguishers and the change of use of the building. After reviewing his findings with a supervisor, on August 1, 2022, Petrarca issued another violation for possession of wild animals in violation of the Town Code.

On August 29, 2022, Petrarca returned to the subject premises. Wallach was again present and identified himself as the business owner. All of the fire code violations had been corrected. Otherwise, there had been no change to the premises since the prior inspection. Thereafter, appearance tickets were issued to the property owner and the business owner, Sloth Encounters.com Ltd, through a process server.

At the direction of the Chief Fire Marshall, on April 6, 2023, Petrarca returned to the premises to perform a re-inspection. Wallach was again present. As Petrarca went through the front door he observed large cages on the left and the right. The cage on the right appeared to contain two "baby" kangaroos. The cage on the left contained various other "creatures". Petrarca observed chinchillas, a "baby" porcupine, a parrot, tarantulas, scorpions, turtles, lizards and snakes. There were also two rolling racks that contained pet supplies. Chairs that had been present during the August, 2022 inspections were mostly removed. Petrarca testified that the premises had the "appearance" of a pet store. Petrarca questioned Wallach about the animals that were at the location. Thereafter, Petrarca issued appearance tickets to Sloth Encounters.com Ltd and Wallach individually for the alleged violation of 12-23C of the Town Code, (the sale of wild animals).

On cross examination Petrarca was questioned about the Town of Islip Code definition of the term "wild animal". In relevant part Petrarca testified:

Q. So is it fair to say, with respect to the Islip definition of wild animals, that it's completely within your discretion as to what you would deem a wild animal when issuing a violation?

A. Yes

Q. So it's up to you?

A. Up to me and up to my supervisors.

Q. So when deeming a sloth as a wild animal, what did you base that opinion on?

A. The fact that they are not native to North America.

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Q. To the best of your knowledge, are there animals that people have as pets that are not native to North America that are not wild animals?

A. I don't know.

Daniel Burgos, a planner in the Town of Islip Zoning Department, (within the Building Division), was called as a witness by the plaintiff. As part of his duties, when a building permit is submitted to the Town, he reviews it for zoning compliance.

In August of 2022, Burgos became involved in the "permitting" process regarding a business located at 551 Veterans Memorial Highway, Hauppauge, New York. The initial application was for a change of use to a petting zoo. On the certificate of occupancy, the use was listed as a pool supply store. According to Burgos, the submission was incomplete. Furthermore, the proposed use is not a permitted use within the zone where the property is located. Thus, either a change of use or a use variance would be required to operate a petting zoo at that location. Burgos believed that the expediting firm that had submitted the application had been notified of its rejection.

Thereafter, Burgos received an updated application form requesting a change of tenant as opposed to a change of use. He also received letter of intent form. The change of tenant application is complete with the exception of one indication on the letter of intent. Burgos explained that once a complete building permit application for a change of tenant is accepted within the Building Division:

"It then gets reviewed by the Zoning Department to verify that that is the current application. And building inspections need to be completed to verify that it's correct use and no alterations have been done to the space, as well as an engineering inspection to verify the safety of the site."

As of the date of his testimony at the contempt hearing, the application had not been accepted by the Building Division. Burgos estimated that it takes approximately two to three months from approval review until a final review is completed and a revised certificate of occupancy is issued.

Lawrence Wallach was called as a witness by the defendants. He is the sole member of Sloth Encounters.com Ltd. 777 Chris's Way, LLC is the landlord at his current place of business. Wallach stated that he has held a USDA "exhibiting license for over thirty years and is licensed in other states". In June of 2022 Wallach opened a petting zoo at the subject location. The only animals in the petting zoo were sloths. He explained that people would come in to see the sloths and would interact with them in a room that was "like a rain forest". Wallach charged \$50.00 to interact with the sloths.

In July of 2022, a fire marshall and another individual came to the location and issued summonses for violations related to fire extinguishers, smoke detectors and the electrical panel. Wallach testified that he corrected the violations. In August of 2022, the same fire marshall returned and performed an inspection.

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Thereafter, he received a summons for having a use not permitted under the Town Code. In or about September of 2022, Wallach received a notice of a court proceeding and was informed that he could no longer operate a petting zoo at that location. He claims that he shut down his business for over three months. During that period, he continued to house the animals at that location and would take them out to be exhibited elsewhere. Wallach also retained the services of All in One Drafting to assist him with obtaining the necessary permits from the Town.

At the end of December, 2022, he re-opened the location as a pet store and filed papers with the Town to operate as such. Wallach testified:

Q. And at the pet shop, when you opened it up, what type of animals did you sell?

A. Everything, all the snakes, lizards, anything to do with a legitimate pet shop, hamsters, the soft things, chinchillas, mice, rats, everything.

Q. Did you also sell sloths?

A. Yes, yes, sloths, a hundred percent.

Q. Did you sell kangaroos?

A. Yes.

Q. Did you sell tortoises?

A. Yes.

\* \* \*

Q. In your pet store, you sell animals?

A. Pet Supplies, leashes, dog food, cat food..

Q. And –

A. Everything.

Q. And could you tell me, in terms of the pet supplies and pet equipment, is that the bulk of your sales?

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A. Yes. Mostly the big bulk is mostly reptiles, dirt, crickets, like, crazy stuff.

Q. In terms of your – if you had to break down the percentages of sales, would you say selling of pet supplies is more than 50 percent?

A. Absolutely.

Wallach testified as follows regarding the operation of the pet store:

Q. And it's your testimony here today that you are no longer running an animal exhibit out of that location?

A. No. What I'm running is a pet store.

Q. And when someone comes to purchase a pet there, are they given a trial period?

A. Yes.

Q. How does that work?

A. Well, I can do a class with them, because I'm going to spend time, like, if you want to do the sloths, and you're interested in buying them, I want a \$50 deposit towards the purchase.

Whether you buy it or not, I'm going to spend all this time with you, I get that money, you buy the sloth, \$50 comes off the price of the sale. That's all.

Q. And the \$50 that's spent –

A. Yes.

Q. – that's a deposit you described it as; correct?

A. Correct.

Q. So someone can interact with the sloths?

A. They can interact with any animal in my store.

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Q. At your place of business; correct?

A. Any animal. Go ahead.

Q. And then at some point either you can determine whether or not they are suitable to own such an animal, or they can make that determination?

A. I can't stop you from buying an animal, but I can say no if you don't live in a place that that animal fits.

So a person comes to me who wants to really buy a sloth; okay? Let's go through it. They want a deposit down, and then I go, Where do you live? Well, I live in a one-bedroom apartment. I'm like, I can't sell you the animal.

\* \* \*

Q. And at that point when you receive the \$50, the person that's seeking to buy the animal can also come to your store and interact with it; correct?

A. Yes.

Q. Does that happen at the same place in the store that it used to happen?

A. Yeah.

Q. And if the person, if you deem the person to be not a fit for that particular animal, then you keep the \$50; correct?

A. Not always.

Q. Okay. So there's been instances where you've taken \$50 –

A. And give it back.

Q – and given it back?

A. A hundred percent.

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Q. When you do that, is anyone seeking to purchase a sloth?

A. Oh, a lot of people want to buy sloths. A lot of people want to buy kangaroos. A lot of people want to buy porcupines and we have capybaras. So right now the big thing is the capys.

\* \* \*

Q. What determines, Mr. Wallach, whether or not they get their \$50 back that you have as a deposit?

A. I mean, just a lot of people have gotten their money back because I really try my very best to be fair and to, like, you know, you have to watch what you're selling.

Like, I wouldn't sell you now a – now, I'm not against pit bulls, but it's not a dog I would sell to a guy who has two two-year-olds in their house.

I just – you're an attorney. You know the law. You know how it goes. I'm a guy that's been around exotics really most of my life. So it's how I look at it. That's all.

Q. So it's a judgment call on your behalf as to whether or not you keep the \$50?

A. Yes.

\* \* \*

Q. So, Larry, someone comes in and they want to buy a sloth. They go into that rain forest type of room?

A. Yes.

Q. And they get to hold a sloth? They get a feel for a sloth; right?

A. Yes.

Q. Now, with respect to a puppy or a kitten, when a person goes and wants to go buy a puppy or a kitten, do you know what happens in the pet store typically?

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A. They sit with them for 45 minutes. They hold them. They play with them. Some stores take money, some don't.

Q. The lizards and the rodents and things that you sell in the store, do the people get to hold these and interact with them before they buy them?

A. Every one of them.

At some point, Wallach removed the scorpions and tarantulas from the store because they were prohibited under the Town Code. It is his belief that it is legal to sell sloths and kangaroos in the State of New York and that he is in compliance with the Town Code.

#### DECISION AFTER HEARING

Under Judiciary Law § 753(A) “[a] court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced . . .”

In order to support a finding of civil contempt the movant must establish, by clear and convincing evidence:

1. That a lawful order of the Court, clearly expressing a lawful mandate was in effect;
2. It must appear with reasonable certainty, that the order was disobeyed;
3. The party to be held in contempt had knowledge of the Court's order; and
4. That prejudice to the right of a party to the litigation has been demonstrated.

(*See, El-Dehdan v El-Dehdan*, 26 N.Y.3d 19, 29). Wilfulness is not a required element of civil contempt (*id.* at 33-34).

Based upon a review of the evidence adduced at the hearing, the Court concludes that the plaintiff has established each of the required elements necessary for a finding of civil contempt against the defendants by clear and convincing evidence. It is the opinion of this Court that the location continues to be operated as a petting zoo under the pretense that it is a pet store. This conclusion is well supported by Wallach's own



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testimony. Further, the Town and its residents are clearly prejudiced by an individual or entity that chooses to operate a business in violation of the Town Code.

In light of the civil contempt determination, this Court is required to impose a penalty that is remedial in nature and effect and that is the least possible exercise of this Court's power to achieve the proposed end, compliance with its order (*see, McCain v Dinkins*, 84 N.Y.2d 216, 229).

Accordingly, it is

**ORDERED** that the plaintiff's motion to hold the defendants in civil contempt of Court is granted; and it is further

**ORDERED** that the March 30, 2023, Order remains in full force and effect; and it is further

**ORDERED** that the defendants are to immediately cease and desist from operating the subject premises as a "pet store" or petting zoo until such time as the necessary approvals have been obtained from the Town; and it is further

**ORDERED** that the plaintiff shall serve a copy of this Decision and Judgment upon the defendants and Larry Wallach and file proof of service with the Court within seven days of this date; and it is further

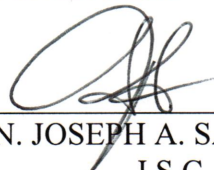
**ORDERED** that upon service of a copy of this Decision and Judgment upon the defendants and Larry Wallach, along with notice of entry, the defendants shall be fined the sum of \$250.00 per day, payable to the Town, for each day the defendants continue to operate as a pet store or petting zoo in violation of the March 30, 2023, Order of the Court; and it is further

**ORDERED** that the plaintiff's motion to hold the defendants in criminal contempt of Court is denied; and it is further

**ORDERED** that any other requests for relief not specifically addressed in this Decision and Judgment are denied.

The foregoing shall constitute the Decision and Judgment of this Court.

Dated: July 10, 2023

  
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HON. JOSEPH A. SANTORELLI  
J.S.C.