

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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MARGARET HEALY,

plaintiff,

The Honorable Yvonne  
Lewis, JSC

- against -

SLANEY O'HANLON and SUSAN McCARTHY,

defendants,

Index No.: 21646/11  
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MEMORANDUM OF LAW IN FURTHER SUPPORT OF  
EMERGENT ORDER TO SHOW CAUSE

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FILED

## Preliminary Statement

This memorandum of law is respectfully submitted by plaintiff Margaret Healy (hereinafter “plaintiff”) in support of a preliminary or permanent injunction continuing the Temporary Restraining Order contained in the Emergent Order to Show Cause, dated September 23, 2011, during the pendency of this action.

### Statement of Facts

Please see the accompanying original Affidavit of the plaintiff Margaret Healy, sworn-to the 23rd of September, 2011; the accompanying original Affidavit of James O’Hanlon, sworn-to the 14th of December, 2011 (hereinafter “James O’Hanlon Affidavit”); and the accompanying original Affidavit of Margaret Healy, sworn-to the 14th of December, 2011, with attached exhibits (hereinafter “Plaintiff’s Affidavit”), all of which are incorporated-by-reference with the same strength and effect as though actually herein repeated at length word-for-word.

### Point 1

**TRO WAS INDISPUTABLY PROPERLY GRANTED  
BASED ON DEFINITIVE EVIDENCE OF DEFENDANTS’  
EGREGIOUS, DANGEROUS AND MENACING  
MISCONDUCT**

The Court, by The Honorable Sylvia G. Ash, J.S.C., properly granted the TRO restraining defendants from contacting plaintiff based on the strength of overwhelming indisputable definitive evidence of the defendants’ egregious, menacing misconduct against plaintiff involving a terrifying and threatening telephone message (Exhibit 7 to Plaintiff’s Affidavit); deception, lies and misrepresentations to force their way into plaintiff’s residence to wrongfully gain access with the malicious intent to forcibly remove her dog for over two (2) years named “Lucy;” and dangerous and menacing road rage against plaintiff to intimidate her to wrongfully take her personal property (Plaintiff’s Affidavit, p.6 ¶24).

In opposition, the defendants conceded, in part, and indeed, significantly, their egregious misconduct (defendant Susan McCarthy's Affidavit, pp. 5-7). Accordingly, the Court's TRO restraining them should be, respectfully, ordered permanent throughout the duration of the lawsuit because it has effectively caused the defendants' threatening telephone messages; the deception, misrepresentations and lies to wrongfully gain access to forcibly remove Lucy; and the dangerous and menacing road rage, all to cease. Absent a preliminary or permanent injunction, the defendants' egregious dangerous misconduct may again occur causing grave, dire and tragic consequences for the elderly plaintiff, Ms. Margaret Healy, her husband and Lucy.

A. Defendants Never Objected to Court's Restraining Them From Contacting Plaintiff

In opposition to the Emergent Order to Show Cause, defendants submitted three (3) affidavits; one (1) from defendant Slaney O'Hanlon (hereinafter "Slaney's Affidavit"), one (1) from her mother Susan O'Hanlon s/h/a Susan McCarthy (her maiden name) (hereinafter "Susan McCarthy's Affidavit") and one (1) from her brother Emmett O'Hanlon (hereinafter "Emmett's Affidavit").

Significantly, Slaney's Affidavit is submitted in opposition to that part of plaintiff's application seeking an order of protection against her from having any contact with plaintiff and plaintiff's husband yet she nevertheless, significantly, avers that "I have always kept my distance from the plaintiff and will continue to do so." (p. 1 of Slaney's Affidavit).

Ms. McCarthy avers that "this requested application should be in all respects denied" (p.8 of Susan McCarthy's Affidavit). Emmett's Affidavit does not address the restraining TRO. Since Slaney avers that she has no intention to have contact with plaintiff or plaintiff's husband and Ms. McCarthy nowhere avers that she either intends or wants to have contact with them, the

restraints contained in numbered paragraphs 1 to 3 of the TRO in the Emergent Order to Show Cause should be made permanent during the pendency of this action.

In deciding whether to make the conditions mandated in the TRO permanent for the duration of the lawsuit, the Court should, respectfully, consider that defendants have not objected to being restrained from contacting the plaintiff and her husband or going to their residence.

Accordingly, paragraphs numbered one (1) to three (3) of the Court's TRO should be made permanent because they are not objected to. Indeed, Slaney averred she "always kept [her] distance... and will continue to do so." (p. 1, Slaney's Affidavit). In light of defendants' egregious menacing misconduct, that they have not objected to being so restrained, and express willingness to be so restrained, the Court should, respectfully, continue the TRO as a preliminary or permanent injunction for the lawsuit's duration to reasonably ensure plaintiff's safety from any further efforts by the defendants, including menacing, dangerous misconduct by defendants, outside of this lawsuit, to "procure" Lucy.

**B. Compelling Evidence, Conceded In Significant Part by Defendants, Definitively Establishes Need for Permanent Injunction**

Due to the definitively established menacing and dangerous misconduct by the defendants, which is, in significant part conceded by them in their affidavits, causing plaintiff's well justified fear of Slaney O'Hanlon and her mother, it, respectfully, would be inappropriate for them to be allowed to contact plaintiff and/or her husband during the pendency of this lawsuit.

Ms. McCarthy's long winded and self-serving downplaying of her harassment and stalking campaign are totally undercut by the definitive proof of her dangerous and menacing misconduct, including defendants' threatening profane phone message she left plaintiff (Exhibit 7 to Plaintiff's Affidavit).

C. Status Quo Is Preserved by the TRO  
and Granting of A Permanent  
Injunction

Plaintiff accepted ownership of Lucy, over two (2) years ago, in September 2009, and since then continuously to the present licensed her, afforded Lucy veterinary care, and met all her needs, including feeding, grooming, walks, training and socializing her. This is the status quo which should be properly preserved by the TRO and preliminary or permanent injunction (McKinney's CPLR §6301; *Walker Mem. Baptist Church, Inc., v. Saunders*, 285 NY 462 (1941) (injunction serves to hold matters in status quo); *Bd. of Higher Education v. Marcus*, 63 Misc2d 268, 311 NYS2d 579 (Supreme Court, Kings County 1970); *International RY. Co. v. Barone*, 246 AD 450, 284 NYS 122 (4th Dept 1935) (object of a preliminary injunction is to maintain status quo pending trial; to stop the continuance of the conduct complained of pending trial)).

Here the compelling facts and the balancing of the equities indisputably justified the granting of the TRO. The granting of the permanent injunction pending trial is also warranted, particularly, in light of the compelling evidence which, in no small insignificant part, is conceded by the defendants.

Point 2

DEFENDANTS NEVER CROSS-MOVED NOR NOTICED  
ANY RELIEF; ACCORDINGLY, THEIR REQUEST TO  
DISMISS THE COMPLAINT IS PROCEDURALLY AND  
JURISDICTIONALLY DEFECTIVE AND FATALLY  
PREMATURE IN ABSENCE OF THEIR COMPLIANCE  
WITH DISCOVERY DEMANDS

Defendant Slaney opposes being prevented from "... taking any steps to procure the return of [her] dog," (p. 1, Slaney's Affidavit) and "[f]or the reasons stated herein the relief in the complaint should be in all respects denied." (last page of Slaney's Affidavit).

Notably absent from Slaney's Affidavit is her omission that the Emergent Order to Show Cause seeks to restrain her taking possession of the dog during the pendency of the action.

Plaintiff does not object to Slaney using this very lawsuit as the means by which she can assert her rights, if any, to “procure” her claimed ownership right to the dog. Obviously, if a trier of fact determines that she is the rightful owner of the dog, then she would receive an order granting her possession of the dog.

Although defendant Slaney does not set forth what steps she wants to take to “procure” the dog during the pendency of the action, it appears that she wants her opposition to the Emergent Order to Show Cause to be treated as a summary judgment motion under CPLR 3212 because if the relief sought in the complaint were denied now, the case would be decided in her favor.

It is patently premature and would be an abuse of discretion to “deny the relief” sought in the complaint. There has been absolutely no discovery taken of defendants and plaintiff needs a full opportunity to take their depositions, and obtain other discovery from plaintiffs to establish, among other things, that they abandoned the dog (*Noah v. Baumblitt Const. Corp.*, 72 AD3d 1037 [2d Dept 2010] (summary judgment is premature when specific discovery is outstanding needed to oppose the motion)). Discovery demands were served (Exhibit 4 to Plaintiff’s Affidavit), but defendants have not complied with any of them.

Defendants never served any notice nor cross-moved for any relief or attached the pleadings, so their “summary judgment,” opposition should be denied in all respects.

### Point 3

#### THERE IS NO FACTUAL NOR LEGAL BASIS FOR VISITATION SINCE, AMONG OTHER REASONS, LUCY IS PERSONAL PROPERTY

It is well-settled, even hornbook law that in New York “... a dog is personal property.” Since under New York law, a dog is property, the proper legal means to recover possession of a dog is a replevin action.

There is no statutory basis nor any basis in law to permit visitation of personal property whose ownership is disputed during the pendency of the suit. Accordingly, it would be flatly contrary to all applicable law and a gross abuse of discretion to permit defendants to do something that the law does not permit, that is, visitation with Lucy pending the outcome of this action.

A. There Is No Statutory Or Legal Authority Nor Precedent Permitting Visitation

Animals, including pets such as dogs are “personal property” (*Freger v. Warwick Animal Shelter*, 29 AD3d 515, 516, 814 NYS2d 700, 702 [2d Dept 2006] (pets are personal property limiting recoverable damages); *Jason v. Parks*, 224 AD2d 494, 495, 638 NYS2d 170 [2d Dept 1996] (“It is well established that a pet owner in New York cannot recover for emotional distress caused by the negligent destruction of a dog.”); *Schrage v. Hatzlacha Cab Corp.*, 13 AD3d 150, 788 NYS2d 4, 5 [1st Dept 2004] (“pets are treated under New York law as personal property...”); *Young v. Delta Air Lines, Inc.*, 78 AD2d 616, 432 NYS2d 390 [1st Dept 1980] (recoverable damages for death of passenger’s dog limited); *Fowler v. Town of Ticonderoga*, 131 AD2d 919, 921, 516 NYS2d 368, 370 [3d Dept 1987] (“a dog is personal property and damages may not be recovered for mental distress...”); *Johnson v. City of New York*, 20 Misc3d 1141(A), 872 NYS2d 691 [Supreme Court, Kings County 2008] (“a dog is personal property”); see also, e.g., 26 U.S.C.A §6334(a)(2) (2006) (animals, including poultry and livestock are property exempt from levy for unpaid taxes); 25 U.S.C.A. §453 (2006) (animals, including livestock is personal property); 25 U.S.C.A. §640d-12 (2006); 12 U.S.C.A. §348 (2006); *Gluckman v. American Airlines, Inc.*, 844 FSupp 151, 158 [SDNY 1994] (“overwhelming authority...” that pets are personal property); *Fackler v. Genetzky*, 595 NW2d 884, 891 [Supreme Court, Neb. 1999] (animals are regarded a personal property)).



Despite the defendants' best efforts to convert this case into something akin to a child custody matter or to drag this case into the pending divorce action between the plaintiff's brother and Ms. McCarthy, this lawsuit concerns solely ownership of what the law deems "personal property," and there is no such thing as "visitation" of personal property.

B. Defendants Stipulated to this Court  
Being the Proper and Exclusive  
Venue, Not Family or Divorce Court

Defendants stipulated to this Court being the proper and exclusive venue for this case, not family court nor divorce court. A true and accurate copy of the stipulation is attached as Exhibit 5 to Plaintiff's Affidavit. Although there is a pending divorce case, not involving plaintiff, pending in Nassau County, the parties stipulated that the Nassau County case has absolutely nothing to do with this case before Your Honor. This Court is the proper and exclusive venue for this "personal property" action. This stipulation further establishes that permitting defendants visitation and/or that the defendants' assertion to an entitlement to "visitation," is baseless and, in any event, generally, the province of a family or divorce court and/or a case involving a matrimonial or child custody dispute which this case absolutely does not involve.

C. In Any Event, the Facts, Including  
Equities Do Not Support Any  
Visitation

Defendants, indisputably, abandoned Lucy (James O'Hanlon's Affidavit, pp 1-12 ¶¶ 2-4; Plaintiff's Affidavit, pp 4-6 ¶¶ 17-22). Lucy was in a horrible and painful state of neglect as a result of having been ignored and abandoned by the defendants:

"When I took ownership of Lucy, she was also in a horrible and painful state of neglect that started even before defendants abandoned her and abruptly left her without notice or warning. Lucy's coat was also matted to the skin and her nails overgrown. She had to be totally shaved down by the groomer as it was not possible to save any length of hair. She was kept in a cage that was too small for her to stand up in at the time that I took ownership of her in September 2009. Mr. O'Hanlon was forced to

put Lucy in a crate day and night because Ms. McCarthy had sought court intervention to restrain the dogs from “ruining” the home she voluntarily left. Ms. McCarthy bitterly complained about the damage that was done to the woodwork in the house which she wanted to be sold. Both dogs went out only in the early morning and late evening when Mr. James O’Hanlon was able to feed them before and after he worked. Lady and Lucy spent twelve (12) to fourteen (14) hours a day, alone, without any human contact, social interaction, exercise, love, etc. Lucy spent that entire time locked up in her cage, which had no padding, no water and no space in which she could relieve herself. Lady was confined to a small hallway with two wee wee pads and a small amount of water. This was their life because Ms. McCarthy complained so bitterly that the dogs were destroying her house. The house, however, remains unsold more than two (2) years later.”

(Plaintiff’s Affidavit, p.5 ¶ 20).

Furthermore, notably absent from the defendants’ proffered affidavits is any mention why neither made any effort for over two (2) years to see Lucy which they are now suddenly so desperate and fanatical to do, by whatever means, even reckless, dangerous, menacing misconduct. Absent from defendants’ affidavits is how the 18 year old Slaney – going off to college and presumably preparing for college – or her mother – working full-time at her restaurant – would care for Lucy. Other than claiming ownership of Lucy whom they knowingly abandoned and completely lost touch with, neither Slaney nor her mother offered any plan, absolutely nothing even remotely suggesting how they would care for Lucy’s companionship, feeding, walking, grooming, training and social needs.

In stark contrast, is the plaintiff’s devoted, loving, practical care of Lucy for well over two (2) years since she was abandoned, including, licensing Lucy, and providing for all of Lucy’s veterinary care, feeding, grooming, walking, training, and social needs. Lucy and plaintiff have developed a very close, very special bond, to make the most of their lives.

In light of the undisputed compelling evidence of Slaney’s express averment in her Affidavit at p.1 to “take [whatever] steps to procure the return of [her] dog,” and the definitive

overwhelming proof of defendants' egregious, dangerous and menacing misconduct against plaintiff, a preliminary injunction extending the TRO for the duration of the lawsuit, is supported by the applicable law to avoid any further injury, including irreparable injury to plaintiff and/or Lucy, and to preserve the status quo.

To allow ownership, including custody to switch to someone that the evidence definitively establishes committed such egregious threatening, intimidating misconduct and a gross inability to properly care for Lucy, would be wrong. Ms. McCarthy's egregious misconduct and mis-treatment of Lucy speaks volumes about the lack of veracity of her other claims. Ms. McCarthy's very own frightening, menacing and intimidating words "and I want Lucy back immediately. How could you fucking do this to us? You bitch[,] " definitively evidences the necessity for a permanent injunction for the duration of this lawsuit.

This undisputed and compelling evidence establishes that there is no basis in law or fact to uproot Lucy and transfer ownership now before any discovery, especially, since defendants have made no showing or even argued that it is in Lucy's best interests for them to take their "property."

#### Conclusion

For the reasons set forth herein, the Court is respectfully requested to grant plaintiff the relief granted in the TRO in the Emergent Order to Show Cause, dated September 23, 2011, making it permanent during the pendency of this action, and for such other and further relief as the Court deems just and proper.

Dated: December 15, 2011  
New York, New York



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