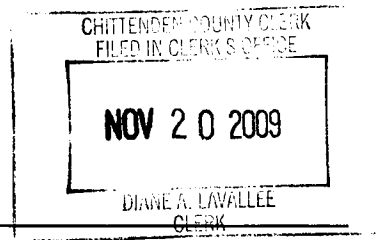


STATE OF VERMONT
CHITTENDEN COUNTY



STATE OF VERMONT
on behalf of the
AGENCY OF TRANSPORTATION AND
AGENCY OF NATURAL RESOURCES
Plaintiff

v.

GILBERT A. RHOADES, SR.
AND
BLANCHE E. RHOADES
Defendants

SUPERIOR COURT
Docket No. S0569-07 CnC

RULING ON MOTION FOR PRELIMINARY INJUNCTION

The court today issues a separate ruling on the parties' pending motions for summary judgment in this case, and here addresses the State's October 27 motion for a preliminary injunction ordering the Defendants to cease purchasing, accepting or receiving any junk materials at their Milton junkyard facility. A status conference was held on this motion on November 5, and Defendants filed a response on November 10.

The motion is based upon Judge Pearson's recent decision issued last month in a related case, Rhoades Salvage/ABC Metals v. Town of Milton, No. S0121-08 CnC. That decision affirmed the Town of Milton's denial of a certificate of approval, a prerequisite to obtaining a state license to operate a junkyard. *See* 24 V.S.A. § 2242. Although this case was filed in 2007, since August of that year this issue has been in abeyance pursuant to a stipulated order by which Defendants agreed to seek such a certificate from the Town, and then to apply for a state license. It is undisputed that the junkyard is operating

without a state license, and that this has been true since 2001.¹ Now that the local license has been denied, and a state license thus cannot be obtained, the State seeks an order pursuant to 24 V.S.A. § 2281 requiring that new operations at the junkyard cease. The State does not at this time seek an order closing the site entirely.

Defendants argue that because they have filed an appeal of Judge Pearson's order, and because they believe that order is stayed pending the appeal (a proposition that the State disputes), they should be allowed to continue operations until that appeal is resolved. Their memorandum does not argue that the State has otherwise failed to meet the legal requirements for a preliminary injunction to enforce a statute in the public interest.

The court concludes that whether Judge Pearson's ruling in the other case is stayed pending appeal or not is not the point here. The State here is not seeking to enforce any order issued in that case. What the State is saying, instead, is that although it was willing to give Rhoades the opportunity to come into compliance with the junkyard licensing law, and thus agreed to a stipulated order to that effect in 2007, it is no longer willing to hold off on enforcing the licensing law. Nothing in the 2007 stipulation in this case *required* the State to delay enforcement while Defendants sought local approval. The order imposed duties only upon the Defendants. Thus, nothing in that order requires that enforcement be delayed pending the resolution of the appeal in the other case.

Defendants do not dispute either that their facility is operating without a license or that the State has failed to satisfy the legal requirements for a preliminary injunction. The

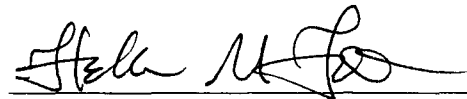
¹ The court notes that although this fact is undisputed, the State's motion for summary judgment on this issue did not seek a ruling on any period after the stipulated order issued in August 2007. Thus, the court's grant of summary judgment for the State on the issue of the junkyard license does not address the issue raised in the preliminary injunction motion: the state of the world *today*.

court finds that the requirements for issuance of an injunction have been met: there is a clear and substantial violation of the statute, and there is no dispute that it is a knowing violation. The court grants the motion.²

Order

Defendants Gilbert A. Rhoades and Blanche E. Rhoades and their employees and agents are ordered to immediately cease purchasing, accepting or otherwise receiving any junk as defined by law, including junk motor vehicles, scrap metal and other materials, at the unlicensed junkyard located at 15 Shirley Avenue in Milton, Vermont.

Dated at Burlington this *20* day of November, 2009.

A handwritten signature in black ink, appearing to read "Helen M. Toor", written over a horizontal line.

Helen M. Toor
Superior Court Judge

² The court has not adopted in full the language proposed by the State, concluding that “materials that pertain to or are associated with the operation of a junkyard” is too ambiguous a term to be enforceable. If the State has some authority to support such broad language it may seek reconsideration on that point.