

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

In the Matter of Access to and Inspection of the
Premises of:

STEVEN AND BARBARA SMITH d/b/a
Meadowsweet Yogurt
MEADOWSWEET DAIRY, LLC
2054 Smith Road
Lodi, new York 14860

DECISION & ORDER
Index No. 9865-07
RJI No. 01-08-092190

by the New York State Department of Agriculture
and Markets

APPEARANCES:

**PATRICK H. BRENNAN, COMMISSIONER OF
THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND
MARKETS**

Attorneys for Petitioner

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LANE, ALTON & HORST, LLC

**Attorneys for Respondents Steven and Barbara Smith d/b/a Meadowsweet Yogurt,
Meadowsweet Dairy, LLC.**

(David G. Cox, Esq.)

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JOHN C. EGAN, JR., J.:

The Petitioner, New York State Department of Agriculture and Markets (State), brings the instant motion by Order to Show Cause, seeking an order of contempt against respondents Steven and Barbara Smith d/b/a Meadowsweet Yogurt, Meadowsweet Dairy, LLC (Meadowsweet or

respondents) based on Meadowsweet's failure to comply with the terms and conditions of an Inspection Warrant (warrant) issued by the Court on December 14, 2007¹ pursuant to the New York State Agriculture and Markets Law (A&ML), which permitted the State to inspect Meadowsweet's milk farm and dairy plant.

Pursuant to the warrant, on December 19, 2007, the State's agents and dairy production specialists (DPS) Cox and Hinz, arrived at the premises and attempted the inspection of the dairy farm and milk plant. Respondent Steven Smith chose not to accompany DPS Cox and Hinz. Upon finding that a door to the plant was locked, DPS Cox and Hinz returned to respondent Steven Smith and requested that he unlock the door. Steven Smith refused. DPS Cox and Hinz left the premises without conducting an inspection. On December 28, 2007, DPS Cox and Hinz returned to the premises, and the plant was again, locked. Respondent Steven Smith refused to unlock the door to the plant and DPS Cox and Hinz left the premises without conducting an inspection. The State claims that the respondents have willfully failed to observe, comply with and carry out the terms of the inspection warrant².

Meadowsweet makes two motions in response to the State's Order to Show Cause. The first motion seeks a stay of the contempt proceedings pending the determination of a related proceeding

¹The Inspection Warrant provided for an inspection of the dairy farm and milk plant operated by the respondents, and authorizes the petitioner to enter the premises "...on a continuing basis; to inspect it; to take photographs; to inspect and vehicle used for the storage or transportation of food to and from the premises; to quarantine food which is adulterated or misbranded; to take samples of food for analysis; and to seize, destroy or denature food or food products which are unfit or unsafe for use as food. Such authority shall be exercised only when the Department has probable cause to believe that the premises are being operated in violation of the Agriculture and Markets Law and/or Title One of the Official Compilation of Codes, Rules and Regulations of the State of New York...."

²On February 28, 2008, the Court heard oral argument on all the submissions.

commenced in Seneca County Supreme Court, bearing Index Number 40558³. The second motion seeks an order quashing the warrant, *inter alia*, a *Franks/Alfinito* hearing, to determine the propriety of the issuance of the inspection warrant.

In support of their motion for a stay, respondents claim that on December 13, 2007, a related proceeding was commenced by respondents in Seneca County Supreme Court seeking a declaration that the A&ML does not have jurisdiction over the respondents. As a result of the State's motion in the Seneca County Supreme Court action, that case was ultimately converted into a proceeding pursuant to CPLR Article 78 and is in the process of being transferred to Albany County Supreme Court. A proposed order in the Seneca County Supreme Court action has been circulated among the parties, and will be submitted to the Honorable Dennis F. Bender, A.S.C.J. for execution.

On December 13, 2007, the State also issued an administrative complaint to respondents, ordering them to show cause why their conduct in the production of raw milk should not be prohibited. A determination on the hearing has not yet been issued. In sum, the State alleges that respondents are a "milk plant" engaged in the business of selling "raw milk" without a "raw milk" permit issued by the Department of Agriculture and Markets, as required by 1 NYCRR §2.3(b). The respondents argue that, because the milk products manufactured are consumed only the respondents' LLC members, no products are sold, offered for sale or made available to members of the public. Thus, respondents argue that they are not subject to State regulation. The respondents submit that the parties and issues presented in both the converted CPLR Article 78 proceeding and the instant

³The proceeding in Seneca County Supreme Court was commenced as a declaratory judgment action, but was converted into a proceeding pursuant to CPLR Article 78, and the parties have represented that it will be transferred to Albany County Supreme Court.

case are identical. Accordingly, the respondents argue that the contempt action should be stayed pending a determination of the administrative and CPLR Article 78 proceedings.

In opposition, the State argues that a stay should be denied to maintain the *status quo* and, since A&ML §20 provides the State with clear authority to inspect the dairy farm, there is no risk that there could be an inconsistent judicial holding with respect to the related CPLR Article 78 proceeding.

Respondents' second motion seeks an order quashing the warrant. Respondents argue that 1) the warrant violates the United State Constitution, the New York State Constitution, and New York Criminal Procedure Law (CPL) §690.30(1), in that the warrant permits the State to enter the premises "...on a continuing basis"; 2) that the warrant impermissibly authorizes the State to determine whether probable cause exists; 3) that the warrant impermissibly does not specify what time of day during which it can be executed; and 4) respondents are not subject to the New York State Agriculture and Markets Law (A&ML), since respondents are not selling or offering raw milk for sale to consumers. Accordingly, respondents contend that an evidentiary hearing is necessary to determine whether probable cause even exists.

In opposition to respondents' motion to quash, the State claims that the warrant is legal, and satisfied the requirements of A&ML §20-a. The State further argues that the strict requirements of CPL §690 do not apply to administrative inspection warrants issued pursuant to A&ML §20-a. Finally, the State argues that respondents have failed to establish a basis for a *Franks/Alfinito*

hearing⁴.

The Court will address the merits of respondents' motion seeking a stay first.

A stay is defined as "a direction of the court, usually embodied in an order, 'freezing' an action or proceeding before it at whatever point it has reached and precluding it from going any further" (see, Siegel, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C2201:1, at 7). CPLR §2201 states that "[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just". A stay of one action pending the outcome of another is appropriate only where the decision in one will determine all the questions in the other, and where the judgment in one trial will dispose of the controversy in both actions; this requires a complete identity of parties, cause of action and the judgment sought. *Somoza v. Pechnik*, 3 A.D.3d 394 (1st Dept.,2004). An application for stay of one action pending determination of another prior action is addressed to court's discretion, and, independently of statute, court may order consolidation or stay to effect parity of result with prior action. *Berger-Tilles Leasing Corp. v. York Associates, Inc.*, 28 A.D.2d 1132 (2nd Dept. 1967).

The issued presented in the CPLR Article 78 proceeding is with whether A&ML is applicable to the respondents. No useful purpose would be served by a ruling on the State's contempt motion based on the respondents' failure to comply with the inspection warrant before a determination of the CPLR Article 78 proceeding is rendered. If the A&ML does not govern the respondents'

⁴A *Franks/Alfinito* hearing is a hearing to challenge the veracity of law enforcement's statements contained in warrant applications pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), and *People v. Alfinito*, 16 N.Y.2d 181(1965). Such a hearing is warranted where a Defendant makes a substantial preliminary showing that there is a false statement included in a search warrant affidavit, and that the officer included the information with knowledge or reckless disregard of its falsity. *Franks*, 438 U.S. 154; *Alfinito*, 16 N.Y.2d 181.

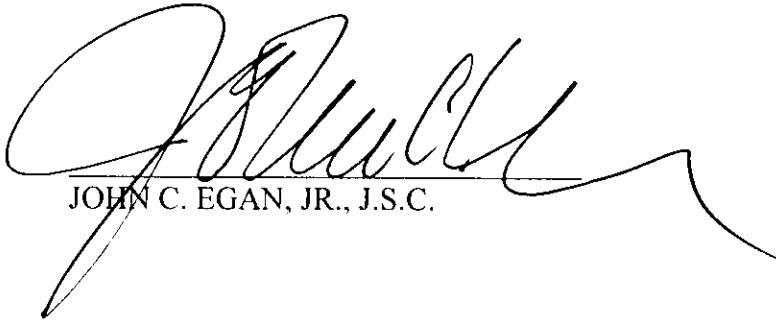
activities, then the respondents cannot be held in contempt for failing to comply with the warrant issued pursuant to the A&ML. Judicial economy dictates that the State's contempt proceeding be held in abeyance pending the outcome of the related CPLR Article 78 proceeding.

Accordingly, the respondents' motion to stay this proceeding pending a decision on the CPLR Article 78 proceeding is granted. The State's Order to Show Cause seeking contempt and respondents' motion seeking to quash the inspection warrant, *inter alia*, an order permitting a *Frank/Alfinito* hearing are hereby stayed.

This memorandum shall constitute both the decision and the order of the Court. All papers are retained by the Court. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that section relating to filing, entry and notice of entry.

IT IS SO ORDERED.

Dated: March 10, 2008
Albany, New York



JOHN C. EGAN, JR., J.S.C.

The Court considered the following papers:

By Petitioner:

Order to Show Cause, dated February 1, 2008;
Affidavit of William Francis, sworn to on January 22, 2008 with Exhibits A-C;
Memorandum of Law in Opposition to Stay, dated February 26, 2008, with Exhibit "A";
Memorandum of Law in Opposition to Quash, dated February 26, 2008.

By Respondents:

Notice of Motion seeking a Stay, dated February 15, 2008;
Motion for Stay and Memorandum on Support, undated but filed February 20, 2008, with Exhibits A-F;
Affirmation of David G. Cox, Esq., sworn to on February 15, 2008;
Notice of Motion dated February 19, 2008;
Affirmation of David G. Cox, Esq., sworn to on February 19, 2008;
Motion to Quash Warrant, inter alia, for a *Frank/Alfinito* hearing, undated;
Memorandum in Support of Motion to Quash Warrant, inter alia, for a Frank/Alfunito hearing, undated.
Notice of Supplementation to its Motion to Quash, undated, with transcripts.