

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORLEANS

---

COPY

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,

v.

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.

---

NOTICE OF MOTION

Index No. 18-45164

PLEASE TAKE NOTICE that, upon the attached affidavit of Kenneth A. Manning, Esq., sworn to December 3, 2018, with exhibits; the affidavit of James J. Breheny, sworn to December 3, 2018, the affidavit of Paul Calle, VMD, sworn to December 3, 2018, the affidavit of Patrick Thomas, PhD, with exhibit, sworn to December 3, 2018, and all papers and proceedings herein, Respondents James J. Breheny and Wildlife Conservation Society, by and through their attorneys, Phillips Lytle LLP, will move this Court at the Supreme Court, Orleans County, located at 1 South Main Street, Suite 3, Albion, New York 14411, on December 14, 2018 at 11:30 a.m., or as soon thereafter as counsel may be heard, for an order:

ORLEANS CO CLERK NY  
2018 DEC 3 PM4:02

1. Pursuant to CPLR 511 and 7004(c), transferring this proceeding to the New York State Supreme Court in Bronx County; or in the alternative,

2. Pursuant to CPLR 3211(a),

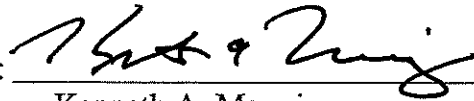
- a. dismissing the Verified Petition of Nonhuman Rights Project Inc., made on behalf of Happy the elephant, for a writ of habeas corpus, with prejudice, for failure to state a cause of action on which relief can be granted, for lack of standing, and pursuant to the doctrine of collateral estoppel; or
- b. in the event the Court does not dismiss the Verified Petition, allowing Respondents five days to answer to the Verified Petition pursuant to CPLR 404(a); and

3. Awarding Respondents' such other and further relief as the Court deems just and proper, including costs and attorneys' fees.

Answering papers and notices of cross-motion, if any, must be served upon attorneys for Respondents in accordance with the Order of this Court dated November 16, 2018, and otherwise in accordance with CPLR. Respondents agree to accept service of the same via electronic transmission to the e-mail addresses stated below.

Dated: Buffalo, New York  
December 3, 2018

PHILLIPS LYTTLE LLP

By: 

Kenneth A. Manning  
Joanna J. Chen  
William V. Rossi

Attorneys for Respondents

*James J. Breheny and*

*Wildlife Conservation Society*

One Canalside

125 Main Street

Buffalo, New York 14203-2887

Telephone No. (716) 847-8400

[kmanning@phillipslytle.com](mailto:kmanning@phillipslytle.com)

[jchen@phillipslytle.com](mailto:jchen@phillipslytle.com)

[wrossi@phillipslytle.com](mailto:wrossi@phillipslytle.com)

TO: Elizabeth Stein, Esq.  
5 Dunhill Road  
New Hyde Park, New York 11040  
[lizsteinlaw@gmail.com](mailto:lizsteinlaw@gmail.com)

Doc #01-3068745.1