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SOUTH STATE, INC.

Plaintiff,

v.

HUNTERDON COUNTY and
 CAPITAL PAVING AND CONTRACTING,
 LLC

Defendants,

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 HUNTERDON COUNTY

DOCKET NO.: HNT-L-186-20

Civil Action

FINAL ORDER

DENIED

This matter being brought before the court by John F. Palladino, Esquire of Hankin Sandman Palladino Weintrob & Bell, a Professional Corporation, Counsellors at Law, attorneys for Plaintiff South State, Inc. ("SSI") by way of Order to Show Cause and the Court having heard argument on June 17, 2020 and having reviewed the moving papers submitted by counsel, and any opposition submitted thereto, and good cause having been shown;

It is on this 18th day of June, 2020, **ORDERED** that:

1. Plaintiff, SSI's Order to Show Cause is hereby **DENIED**;

See Addendum attached regarding plaintiff's request for a stay of this order.

REASONS PLACED ON THE RECORD JUNE 17, 2020

DENIED 2. ~~Defendant, Hunterdon County (the "County") must reject the bid of Defendant, Capital Paving and Contracting, LLC as materially non-responsive and defective;~~

DENIED 3. ~~The County shall award the "Resurfacing of County Route 513 and County Route 628 in the Township of Alexandria, Franklin and Lebanon and the Borough of Glen Gardner, County of Hunterdon" Project to SSI as the lowest responsive and responsible bidder;~~

4. This is a Final Order; and

5. A copy of this Order shall be served upon all counsel within 7 days of the date hereof.

/s/ MICHAEL F. O'NEILL, J.S.C.

MICHAEL F. O'NEILL, J.S.C.

ADDENDUM**SOUTH STATE, INC.****vs.****HUNTERDON COUNTY and CAPITAL PAVING AND CONTRACTING, LLC****HNT-L-186-20**

After the court placed its decision on the record, plaintiff's counsel requested a stay of the ruling, indicating a desire to file an immediate appeal from the court's final order. Both defendants objected to the entry of a stay and all counsel agreed to have the court consider the application without further briefing. This addendum addresses plaintiff's request for a stay, pending appeal.

Applications for a stay pending appeal are governed by the familiar standard outlined in Crowe. [Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982)] A party seeking a stay must demonstrate that (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the 'relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.' McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486, 825 A.2d 1124 (2003) (LaVecchia, J., dissenting) (citing Crowe, *supra*, 90 N.J. at 132-34, 447 A.2d 173). The moving party has the burden to prove each of the Crowe factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183, 36 A.3d 1075 (App.Div.2012) (citation omitted). 'In acting only to preserve the status quo, the court may 'place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy.' Ibid. (citation omitted).

[Garden State Equality v. Dow, 216 N.J. 314, 320)]

After carefully evaluating all of the Crowe factors, the court concludes that plaintiff cannot satisfy all of the requirements for a stay. Consequently, the court is required to deny the application.

While plaintiff arguably can satisfy some of the Crowe factors, it must satisfy all of them, by clear and convincing evidence, to justify the imposition of a stay pending appeal. Most notably,

for the reasons expressed by the court in denying plaintiff's request for injunctive relief, the court cannot find that plaintiff's claim "rests on settled law and has a reasonable probability of succeeding on the merits." Id. at 320. The court has concluded that plaintiff's claim is not based on settled law and, thus, finds that there is little likelihood of success on the merits. The court bases its conclusion on its finding that 1) defendant Capital Paving substantially complied with N.J.S.A. 52:25-24.2, in supplying the ownership information mandated by statute; and 2) any defect or deficiency in the information supplied was minor and waivable by the defendant, County of Hunterdon.

For the foregoing reasons, plaintiff's request for a stay is **DENIED**.

/s/ MICHAEL F. O'NEILL, J.S.C.

MICHAEL F. O'NEILL, J.S.C.