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WILSON HOLDINGS, L.P., a California limited partnership; LOS ALTOS XXVII, L.P., a California limited partnership

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

NORTHGATE GONZALEZ, LLC, a California limited liability company; WILSON HOLDINGS, L.P., a California limited partnership; LOS ALTOS XXVII, L.P., a California limited partnership, Plaintiffs, vs. REALM REAL ESTATE, LLC, a California limited liability company; MAGNOLIA PARTNERSHIP, LLC, a Delaware limited liability company; and DOES 1-50 inclusive, Defendants.	CASE NO. CVRI2104149 Assigned to For All Purposes: Judge Chad Firetag/Dept. 03 **~~[PROPOSED]~~ ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** Date: October 20, 2021 Time: 8:30a.m. Dept: 03 Complaint Filed: September 14, 2021

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PLEASE TAKE NOTICE that on October 20, 2021 at 8:30 a.m. in Department 3 of the above-mentioned Court, Plaintiffs Northgate Gonzalez, LLC, Wilson Holdings, LP, and Los Altos XXVII, LP's (collectively "Plaintiffs") Motion for Preliminary Injunction (the "Motion") was heard. Appearances were made as reflected on the record.

After reviewing the documents submitted and hearing argument from counsel, with good cause appearing:

IT IS ORDERED THAT:

1. Defendants are restrained and enjoined, pending the resolution of this case, from constructing, building, or pursuing the residential real estate project, as fully described in **Exhibit A**.

2. A bond shall be posted by Plaintiffs in the amount of $10,000.00 within 20 days.

IT IS SO ORDERED.

Date: 10/22/21

JUDGE OF THE SUPERIOR COURT
CHAD W. FIRETAG

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Tentative Rulings for October 20, 2021
Department 3

To request oral argument, you must notify Judicial Secretary Vanessa Siojo at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 3 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES MUST APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS. **IN-PERSON APPEARANCES WILL NOT BE PERMITTED.**

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (213) 306-3065 or 1 (844) 621-3956 (TOLL FREE)
- Meeting Number: 805-993-102#
- Press # again

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at https://riverside.courts.ca.gov/PublicNotices/Webex-Appearances-Public-Access.pdf?rev=05-29-2020-09:54:48am.

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.



2.

CVRI2104149	NORTHGATE GONZALEZ, LLC VS REALM REAL ESTATE, LLC	PRELIMINARY INJUNCTION

Tentative Ruling:

The Court grants the preliminary injunction. Pending resolution of this case, the Defendants are restrained and enjoined from constructing, building, or pursuing the residential real estate project known as the Realm Project, as presented in Defendants' proposal to the City of Riverside of a Site Plan Review (P19-0863) and a Conditional Use Permit (CUP P20-0133) on the property with APN Nos. 143-180-028, 143-180-031, and 143-180-032.

Plaintiffs are ordered to post a bond of $10,000.00 within the next 20 days.

FACTUAL / PROCEDURAL CONTEXT

Plaintiffs Wilson Holdings, LP and Los Altos XXVII, LP own real property on 10391 Magnolia Avenue, Riverside, and lease it to Plaintiff Northgate Gonzalez, LLP which operates Northgate Market. Defendant Magnolia Partnership, LLC owns real property at 10411-10481 Magnolia Avenue. The predecessors-in-interest to all the real property recorded covenants and easements to form a shopping center, i.e. Four Party Agreement entered in 1979 that required the owners to use the property as a shopping center, limits development, and prohibits the impediment of pedestrian or vehicular traffic. Defendants Magnolia Partnership and Realm Real Estate, LLC are currently developing 450 residential units that would eliminate Northgate's delivery trucks ingress and egress, interfere with customers' ability to access Northgate, overburdening parking, etc. On 9/14/21, Plaintiffs filed their complaint for: (1) breach of contract; (2) quiet title; (3) enforcement of easement; and (4) declaratory relief.

On the same day it filed the complaint, Plaintiffs filed an ex parte application for TRO and Preliminary Injunction from developing the property. Plaintiffs argue that the four original property owners, Wiest Plaza (now owned by Defendant Magnolia Partnership), William Lee Dieterle, Hyrosen Property, and Magnolia Properties (now owned by Plaintiffs Wilson Holdings and Los Altros) entered into mutual easements for ingress and egress. They assert that the development will affect the ability of Northgate to make delivery vehicles, the ability of customers to access the store, parking, and subject the property to noise issues (e.g. being deemed a noisy neighbor at night due to nighttime deliveries). It requests that the court not issue a bond, or a minimal bond since Defendant does not have final approval or permits.

In its opposition to the ex parte, Defendants contend Plaintiffs failed to exhaust their administrative remedies with the City and improperly filed this action, despite knowing about the project. They complain about Plaintiffs misuse of recording a lis pendens. They assert that Plaintiffs have been threatening Defendants by seeking compensation. The declarations indicate the City considered ingress and egress issues, and that a mixed-use project is a commercial use. In its supplemental opposition, Defendants again argued that Plaintiffs failed to exhaust their administrative remedies. They assert it is commercial real property under Civil Code §2079.13. They otherwise assert that the development will not impact the delivery trucks, and that the project complies with the easement.

A. Plaintiff's Objections:

Walcker Decl.:	All objections are overruled.
Renard Decl.:	Sustain no. 1, 2.
Green Decl.:	Sustain no. 1, 2.
Saunders Decl.:	Sustain no. 1 through 11, 13, 14. All other objections overruled.
Olson Decl.:	Sustain no. 3, 6, 7, 10, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36, 37, 38, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 64, 69, 72, 79, 80. All other objections overruled.
Supp. Olson Decl:	Sustain no. 2. All other objections overruled.
Kawamura Decl:	Sustain no. 1, 2, 3, 7. All other objections overruled.
Supp. Kawamura Decl.:	Sustain no. 2, 3. All other objections overruled.

B. Defendants' Objections

Webb Decl.:	Sustain no. 3, 4, 5. All other objections overruled.

Middleton Decl.:	All objections overruled.
Supp. Bell Decl.:	All objections sustained.
Nierman Decl.:	All objections sustained.
Dieterle Decl.:	All objections sustained.
McCarron Decl.:	All objections overruled.
Watkins Decl.:	Sustain no. 2, 3, 4, 5, 6. All other objections overruled.

ANALYSIS

A motion for preliminary injunction must show (1) a probability of prevailing on the merits, and (2) that the balance of hardships favors issuance of the injunction. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463.) However, "[t]he applicant must demonstrate a real threat of immediate and irreparable injury." (*Triple A. Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 138.)

A. Exhaustion of Administrative Remedies

First, Defendants assert Plaintiffs failed to exhaust their administrative remedy. "Under the doctrine of exhaustion of administrative remedies, 'where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act.'" (*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1447.) Exhaustion is a jurisdictional prerequisite, which must occur before the court can get involved. (*Id.*) "In order to satisfy the exhaustion of administrative remedies requirement, 'the exact issue raised in the lawsuit must have been presented to the administrative agency so that it will have had an opportunity to act and render the litigation unnecessary.'" (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 441.)

The Court is not persuaded by Defendants' arguments. Defendants fail to demonstrate what administrative remedies Plaintiffs were required to exhaust, especially given that this is not an action between Plaintiffs and the City or some governmental entity, but rather between private parties. Defendants focus on Municipal Code §19.680.030 regarding appealing decisions of an Approving Authority. But the problem with Defendants' analysis is while the Planning Authority may have considered the easement issue, nothing in the law prohibits Plaintiffs from bringing causes of action against Defendants, *i.e.,* private entities, for alleged breaches. Indeed, Municipal Code §19.650 provides that the Planning Agency has the "review of the of the land use development permits and actions required by the Zoning Code." Municipal Code §19.050.030 defines the responsibilities of the Planning Commission, which is mainly to hear and act on applications. Defendants' development plan has nothing to do with Plaintiffs' suit to enforce their easement. Defendants' fail to demonstrate that the City can restrict Plaintiffs' easement.

Furthermore, " 'An easement involves primarily the privilege of doing a certain act on, or to the detriment of, another's property.' [Citation.] An easement gives a nonpossessory and restricted right to a specific use or activity upon another's property, which right must be less than the right of ownership." (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1306.) City's involvement deals with zoning—not property rights of third parties.

B. The Easement

To that end, easements are subject to the same rules of interpretation as contracts, with the primary objective in construing the intent of the parties. (*Willard v. First Church of Christ, Scientist* (1972) 7 Cal.3d 473, 476.) Contract interpretation is a question of law for the court to

determine.[1] (*Ben-Zvi v. Edmar Co.* (1995) 40 Cal.App.4th 468, 472.) "The overriding goal of contract interpretation is to give effect to the mutual intentions of the parties at the time of contracting, 'so far as the same is ascertainable and lawful.'" (*South Pacific Transportation Co. v. Santa Fe Pacific* (1999) 74 Cal.App.4th 1232, 1240, citing Civil Code §1636.) The language of a contract governs its interpretation, if said language is clear, unambiguous and does not involve absurdity. (*National Marble Co. v. Bricklayers & Allied Craftsmen* (1986) 184 Cal.App.3d 1057, 1067.) If two or more interpretations of a contract provision are reasonable, it will be considered ambiguous. (*Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 878.) To resolve ambiguities in a contract the court generally looks at the ordinary meaning of the words of the contract, the circumstances under which it was made and the intent of the parties. (*Id.*)

In 1979, Wiest Plaza, LP, William Lee Dieterle, Hyrosen Properties, Inc., and Magnolia Properties entered into a Grant of Reciprocal Cross Easements. (Moving Exhibit 1.) Under the Recitals, ¶E, the four parcels "are contiguous parcels of real property which the parties intend to use or are presently using for ***shopping center and commercial purposes***. The parties have determined that it is in their best interest to grant and establish reciprocal rights of ingress, egress, access and parking with respect to said Parcels of real property and accordingly have entered into this Agreement." (*Id.* at p. 1 [Emphasis added].) The parties granted a nonexclusive easement for parking area purposes that was binding to successors, assigns, occupants, tenants and subtenants. (*Id.* at p.2, ¶1.) The parties also stated: "It is understood that the parties intend to develop or have developed Parcels...***as commercial and shopping center properties***. In connection therewith, said Parcels have been and will be improved with buildings which will be used for ***shopping and commercial purposes***." (*Id.* at p. 2., ¶2 [Emphasis added].) "The remaining areas...not devoted to building uses are intended and shall be used for motor vehicle parking, for landscaping, for access, ingress and egress to and within the ***shopping center and commercial areas***, for driveways and for pedestrian walkways (sidewalks) and similar purposes, but each such area will be used only for its developed use." (*Id.* at p. 2-3, ¶2 [Emphasis added].) "Parking Area Purposes" was defined as "the mutual and reciprocal use of the Parking Areas for ingress and egress to and from public streets, for access, ingress and egress within the ***shopping center and commercial areas*** of [Parcels], for parking of motor vehicles, and for pedestrian ingress, egress and access.... (*Id.* at p. 3, ¶3 [Emphasis added].) The Agreement further precludes "any building, fence, wall, grade change or other obstruction, which would unreasonably impede the free flow of traffic...." (*Id.* at p. 4, ¶4.)

The Court finds that the language of the FPA clearly sets forth that this property is to be used as a commercial shopping area. Defendants contend, however, that the proposed property project is "commercial" under Civil Code §2079.13. First, the contract was entered in 1979—section 2079.13 was added by statute in 1995. Defendants provide no authority that a later enacted statute could be used to interpret an earlier contract. Furthermore, section 2079.13 provides definitions for purposes of real estate brokers and agents. Section 2079.13 has no relevance for construing this easement. Nor does the court find Defendants' experts' declarations regarding the definition of commercial to be relevant (e.g., Kawamura Decl., Green Decl., Saunders Decl., Renard Decl.) as this is not an industry standard. Furthermore, none of these experts provide any evidence that this definition was used back in 1979, when the parties originally entered into this agreement. Nor does the court find Defendants' use of Wikipedia to be relevant.

It is clear that the City approved this project as a mixed-use project. (Motion, Ex., 7-8; Opp., Exhibits A, DD, HH, JJ, KK.) Under City's own definition of a mixed-use development, this "means a single building containing more than one type of land use or a single development of

[1] As noted above, the Court sustained both the Plaintiffs and Defendants' objections to declarations regarding how the Court should interpret the word "commercial" vs. "residential." Contract interpretation is a matter of law, and as such, the use of parol evidence or other interpretations are not relevant to this inquiry.

more than one building and use, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas." (Municipal Code §19.910.010.) Thus, City approved this as a projected constituted of different types of land use, i.e. residential and commercial. As such, the Defendants' project is not strictly a commercial project. The Court finds that this project is subject to the easement.

" 'The rights and duties between the owner of an easement and the owner of the servient tenement ... are correlative. Each is required to respect the rights of the other. Neither party can conduct activities or place obstructions on the property that unreasonably interfere with the other party's use of the property. In this respect, there are no absolute rules of conduct. The responsibility of each party to the other and the 'reasonableness' of use of the property depends on the nature of the easement, its method of creation, and the facts and circumstances surrounding the transaction."

(*Dolnikov v. Ekizian* (2013) 222 Cal.App.4th 419, 428–429.) "As applied to dominant owners, the rule of reason allows them to exercise secondary easement rights 'so long as the owner thereof uses reasonable care and does not increase the burden on or go beyond the boundaries of the servient tenement, or make any material changes therein.' " (*Id.* at 429.) The servient owner is also subject to the reasonableness standard. (*Id.*) "The servient owner is 'entitled to make all uses of the land that are not prohibited by the servitude and that do not interfere unreasonably with the uses authorized by the easement... .' (Ibid.) '[T]he servient owner may use his property in any manner not inconsistent with the easement so long as it does not unreasonably impede the dominant tenant in his rights.' [Citation.] "Actions that make it more difficult to use an easement, that interfere with the ability to maintain and repair improvements built for its enjoyment, or that increase the risks attendant on exercise of rights created by the easement are prohibited ... unless justified by needs of the servient estate." (*Id.* at 429-430.)

C. The Court finds that Plaintiffs are likely to prevail

As such, the Court finds that the Defendants' development is not a commercial or shopping center, and thus the Plaintiffs are likely to prevail as the project would be in violation of the easement. Further, the proposed project would affect the parking for Plaintiffs' customers. In Defendants' supplemental opposition, they argue that the Agreement requires each parcel for the necessary parking per the requirements of the applicable governmental authority. They provide no citation to the Agreement where it provides such. The Agreement provides: "Notwithstanding the foregoing, except as provided in paragraph 20 below, nothing herein shall be construed to prevent any of the parties hereto...from erecting additional buildings on Parcels..., or altering the location of existing buildings on the respective Parcels, provided, however, that the number of parking spaces on each of said Parcels shall not be reduced below the number of parking spaces required by any government agency with respect to the building square footage located on each respective Parcel." (Motion, Ex. 1, p. 4, ¶4.) Paragraph 20 created a common drive that prohibited any construction of a building. All the Agreement provides is that parking shall not be lowered than what the government requires should a new building be erected. What Defendants fail to address is that all the property owners are both easement owners and servient owners—in that there are reciprocal easements.

Lastly, the other issue is the egress and ingress issue. Here, Plaintiffs provide the declaration of Matthew E. Webb, who indicates that both delivery trucks and customers will be impacted. Here, the only declarations provided by the opposition are of Darrin Olson, President of Defendant Magnolia and Managing Member of Defendant Realm, who provides conclusions, and the declarations of James Kawamura. Kawamura in his original declaration merely concludes that the project was designed with the Agreement in mind—but provides no evidence other than conclusions. (Kawamura Decl. ¶11.) In his supplemental declaration, he merely provides conclusions that there are no issues. (Kawamura Decl. ¶7-10.)

For these reasons, the Court finds that Plaintiffs have met their burden to show that they are likely to prevail on the merits.

D. Balance of Harms

The purpose of a preliminary injunction is to preserve the status quo. (*Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 361.) Here, Plaintiffs have demonstrated a probability of prevailing and that they will be harmed by the development.

As to the balance of harms, the Court finds that it inures to the benefit of Plaintiff. While the Court is cognizant that this decision will hamper the Defendants' interest in moving forward on their project, as well as stall additional housing within the City, the Court cannot simply ignore the plain meaning of the FPA and the Plaintiffs' respective rights. Further, to allow construction to proceed before an adjudication on the merits of the easements will be detrimental to Plaintiffs, and also the Defendants, should Plaintiffs prevail later at trial.

The Court thus finds that the balance of harm weighs in favoring of granting the preliminary injunction.

E. Bond

CCP section 529 requires a bond in an amount to cover any damages to the defendant caused by the issuance of the injunction if the plaintiff is not entitled to the injunction. (CCP §529). The trial court is to estimate the harmful effect of the injunction. (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1061.) This is to include any reasonably foreseeable damage caused by the injunction, and may include costs to opposing the injunction. (*Id.* at 1061-1062.) The court may also consider (but not make it a controlling factor) the greater the likelihood of the plaintiff prevailing. (*Id.* at 1062.)

Based on representations made at the TRO hearing, it appears that construction on the Property was not yet to occur for at least six months. As such, the Court imposes a bond of $10,000.00, to be deposited within 20 days.

3.

