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SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

9/28/2017 8:00am

CV 2017-012173

09/27/2017

HON. RANDALL H. WARNER

CLERK OF THE COURT  
K. Ballard  
Deputy

C J DESIGN & CONSTRUCTION  
CORPORATION

JOHN DOUGLAS WILENCHIK

v.

668 NORTH L L C, et al.

GREGORY J GNEPPER

UNDER ADVISEMENT RULING

Plaintiff CJ Design & Construction Corporation's Application for Temporary Restraining Order (TRO) against Defendant 668 North LLC is under advisement. The court has set an evidentiary hearing on CJ Design's request for preliminary injunction hearing; the purpose of a TRO is to preserve the status quo until that hearing. *Workman v. Bredesen*, 486 F.3d 896, 922 (6th Cir. 2007). The standard for issuing a TRO is the same as for a preliminary injunction, though the court's application of the relevant factors is affected by the accelerated timeframe. That standard requires proof of the following:

1. A strong likelihood of success on the merits;
2. The possibility of irreparable injury not remediable by damages;
3. The balance of hardships favors a TRO; and
4. Public policy favors a TRO.

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*IB Property Holdings, LLC v. Rancho Del Mar Apartments Ltd. Partnership*, 228 Ariz. 61, 64-65, 263 P.3d 69, 72-73 (App. 2011). These requirements may be applied on a sliding scale so that a TRO may be granted if there is “either probable success on the merits and the possibility of irreparable injury or the presence of serious questions that go to the merits and the balance of hardships tips sharply in its favor.” *Arizona Citizens Clean Elections Com’n v. Brain*, 233 Ariz. 280, 288-89, 311 P.3d 1093, 1101-02 (App. 2013).

1. **The Merits.**

The Chinese Cultural Center in Phoenix (“the Center”) is a business condominium that has historically focused on Chinese-American businesses. Defendant 668 North, LLC owns 98 of the 103 condominium units there. CJ Design owns the remaining five units, where it operates the Szechwan Palace Restaurant.

668 North is currently planning renovations to the units it owns and to the “common elements,” which are portions of the property common to all condominium owners. The common elements include the Center’s roof, which CJ Design claims is culturally and architecturally unique, and a garden on the east side of the Center used by the public for reflection or prayer.

Two sets of CC&R’s govern the Center. One governs just the Center itself; the other governs a larger area that includes the Center and certain surrounding properties. Although 668 North owns the majority interest in the Center – and therefore controls the condominium association board – it still must comply with the CC&R’s in order to make changes to the common elements.

CJ Design seeks injunctive relief with respect to three things: access to its restaurant, access to and preservation of the garden, and renovation of the roof. With respect to restaurant access, it has not shown a likelihood of success or serious questions on the merits. Patrons can reasonably access the restaurant and they have adequate parking. In addition, 668 North has agreed to open up a pedestrian walkway with access to 44th Street.

With respect to the garden, CJ Design has shown serious questions on the merits. Although 668 North may restrict access to the garden to secure it and ensure safety during construction, it is not clear on the present record whether this is necessary. Moreover, there is a concern that statues in the garden not be removed or destroyed during the renovation.

With respect to the roof, CJ Design has shown serious questions on the merits. The present record is insufficient to allow the court to decide whether reconstruction of the roof has been approved in the manner required by the CC&R’s. But Plaintiff makes at least a plausible

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case that it has not been, so the court will need to hear evidence on that issue at the preliminary injunction hearing.

**2. Irreparable Injury.**

Having found serious questions on the merits regarding two issues, the court turns to irreparable injury. It finds no irreparable injury arising from the fencing of the prayer garden between now and the preliminary injunction hearing. It does find irreparable injury would occur, however, if statues are removed or destroyed.

The court also finds irreparable injury regarding the roof. If CJ Design is correct that 668 North did not receive proper approval under the CC&R's for the roof, and if CJ Design is correct that features of the roof are unique and irreplaceable, then removing the current roof could cause irreparable harm to CJ Design's interests as a condominium owner.

**3. Balance of Hardships and Public Policy.**

Turning to equitable considerations, the court must balance the parties' respective hardships. There are no public policy considerations that weigh in the court's analysis. This case involves the parties' private property interests, and its resolution turns on the meaning and application of the CC&R's.

With respect to renovation of the roof, the balance of hardships tips strongly in CJ Design's favor. Evidence at the preliminary injunction hearing may or may not show that 668 North received proper approval under the CC&R's to remove the current roof and replace it with something different. In the event it did, the consequence of granting a TRO will be a short delay in construction. In the event it did not, the consequence of denying a TRO could be the irreparable destruction of a distinctive design feature. As to this issue, the equities favor preserving the status quo until the court can hear evidence at the preliminary injunction hearing.

With respect to the fencing of the garden area, the equities weigh against a TRO. 668 North has already agreed to permit access to the walkway that runs from 44th Street into the Center, thus allowing pedestrian access to the restaurant. And CJ Design has not shown irreparable injury arising from a temporary lack of access to the garden.

The equities tip sharply in favor of an injunction against the removal or destruction of statues in the garden. Although it does not appear that this is planned, an injunction will ensure preservation of the status quo pending the evidentiary hearing.

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4. **Bond.**

Having determined that a TRO is warranted, the court must set a bond. *See* Ariz. R. Civ. P. 65(c) (“The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in such amount as the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.”). A bond is needed because issuance of a TRO may delay 668 North’s construction of a new roof, thus delaying its ability to occupy or lease the units it owns. The court finds a proper bond to be \$25,000. This is likely far less than the reasonable rental value of 668 North’s condominium units, but is reasonable under the circumstances.

5. **Order.**

**IT IS ORDERED** granting the Application in part and entering the following TRO:

1. 668 North shall not commence replacement of the roof or remove any part of the roof.
2. 668 North shall leave the garden in its current condition and shall not remove or destroy any statues in the garden.
3. This TRO replaces the TRO issued on September 15, 2017.
4. This TRO expires when the court rules on CJ Design’s application for preliminary injunction.

**IT IS FURTHER ORDERED** that this TRO is conditioned on CJ Design posting a bond in the amount of \$25,000 no later than **October 13, 2017**.



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JUDGE OF THE SUPERIOR COURT

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest September 27 2017  
MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By K. Pedard Deputy