

RICHARD W. JACKSON,	§	IN THE COUNTY COURT
LISA C. JACKSON, and	§	
KATHLEEN WOODALL,	§	
Plaintiffs,	§	AT LAW NUMBER TWO OF
vs.	§	
	§	
JANICE COX and HELEN RAMSEY,	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

DEFENDANTS’ MOTION TO DISSOLVE THE TEMPORARY INJUNCTION

Defendants and Counter-Plaintiffs file their Motion To Dissolve The Temporary Injunction, and would respectfully show the court the following:

I. EXECUTIVE SUMMARY

Background: On February 24, 2017, Plaintiffs sued Ms. Cox and Ms. Ramsey to prevent them from following Section 4 of Article I of the 1972 Deed Restrictions to prohibit rentals for less than ninety (90) days. Plaintiffs’ claims were for (1) a declaratory judgment that a notice and ACC approval requirement in Article IX of the 1972 Deed Restrictions could be copied/pasted into Section 4 of Article I of the 1972 Deed Restrictions and (2) breach of contract based on this same rewriting of the 1972 Deed Restrictions. Plaintiffs moved for a temporary restraining order and a subsequent temporary injunction, which the Court granted.

Problem: On November 17, the Court ruled against Plaintiffs on their sole basis for the temporary injunction. The Court rejected Plaintiffs’ interpretation of the 1972 Deed Restrictions and granted Defendants’ Motion for Partial Summary Judgment As To Claims And Counterclaims Concerning Section 4 Of Article I Of The Restrictive Covenants. Furthermore, Plaintiffs previously dropped their breach of contract claim that was based on their same faulty contract interpretation.

Relief: Defendants respectfully request that the Court grant this Motion, dissolve the temporary injunction, award Defendants the bond, and grant further relief.

II. ARGUMENT AND AUTHORITIES

A. The Sole Basis For Plaintiffs' Temporary Injunction Was Their Faulty Contract Interpretation.

On February 24, 2017, Plaintiffs sued Ms. Cox and Ms. Ramsey. Their sole claim for declaratory judgment was the following:¹

“Plaintiffs seek a declaration that 30 days’ notice to all owners of proposed amendments and the prior recommendation of the ACC are required before any amendment may be adopted and recorded.”

As set forth in Plaintiffs’ lawsuit, these requirements are in Article IX of the 1972 Deed Restrictions.² These requirements are not in Section 4 of Article I of the 1972 Deed Restrictions. Plaintiffs’ breach of contract claim was based on Plaintiffs’ same faulty interpretation of the 1972 Deed Restrictions.³ Although Plaintiffs amended their claim twice before the temporary injunction hearing, these claims remained the same and Plaintiffs did not add any new claims.⁴

In his opening argument, Plaintiffs’ counsel made it clear that the sole basis for Plaintiffs’ request for a temporary injunction was their faulty interpretation of the 1972 Deed Restrictions:⁵

“We will show and will also argue that there are certain deeds restrictions in a subdivision from 1972 and that those deed restrictions do not allow any amendment to those restrictions without two specific things occurring.

One, written notice to all owners 30 days in advance of the adoption of the amendment. Two, a quote “recommendation” by an entity called the architectural control authority.”

Subsequently, the parties filed competing motions for partial summary judgment concerning the proper interpretation of the 1972 Restrictions. The Court recently ruled in favor of Defendants and granted partial summary judgment against Plaintiffs’ claims.

¹ Plaintiffs’ Original Petition at ¶ 25.

² *Id.* at ¶ 13.

³ *Id.* at ¶ 26-29.

⁴ Plaintiffs’ First Amended Petition at ¶ 25; 26-29; Plaintiffs’ Second Amended Petition at ¶ 25; 26-29.

⁵ Transcript of March 9, 2017 Temporary Injunction Hearing at 6-7.

B. The Court Rejected The Sole Basis For Plaintiffs' Temporary Injunction And Granted Defendants' Motion For Partial Summary Judgment Against Plaintiffs' Claims.

On October 12, 2017, Defendants filed their Motion For Partial Summary Judgment As To Claims And Counterclaims Concerning Section 4 Of Article I Of The Restrictive Covenants ("Defendants' MPSJ"). As set forth in the Motion, Defendants sought a partial summary judgment as to the claims that were the basis for Plaintiffs' temporary injunction:⁶

This Motion for Partial Summary Judgment covers Plaintiffs' claims for (1) declaratory judgment that "30 days' notice to all owners of proposed amendments and the prior recommendation of the ACC are required before any amendment may be adopted and recorded" and (2) breach or attempted breach of the Restrictive Covenants. Defendants also move for summary judgment on their declaratory judgment claim that the requirements of notice and prior recommendation of the Architectural Control Authority in Article IX are not copied/pasted into Section 4 of Article I of the Restrictive Covenants.

On the other hand, Plaintiffs filed their Renewed Cross-Motion for Partial Summary Judgment Concerning Procedure for Amending Restrictive Covenants ("Plaintiffs' Cross-MPSJ"). Plaintiffs' Cross-MPSJ was a mirror-image of Defendants' MPSJ and sought the opposite interpretation of the 1972 Deed Restrictions.

On November 17, 2017, the Court issued its rulings. Importantly, the Court granted Defendants' MPSJ as to this contract interpretation issue:⁷

"ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Partial Summary Judgment as to Claims and Counterclaims Concerning Section 4 of Article I of the Restrictive Covenants is GRANTED."

The Court similarly denied Plaintiffs' Cross-MPSJ. By its orders, the Court disposed of Plaintiffs' claims in favor of Defendants.

⁶ Defendants' MPSJ at 3 (emphasis added).

⁷ Order on Defendants' Motions for Summary Judgment at 2 (emphasis in original).

C. The Court Should Dissolve The Injunction And Grant Relief To Defendants.

By its Orders, the Court also eliminated the sole basis of Plaintiffs' temporary injunction. There is no basis for Plaintiffs' temporary injunction. Therefore, pursuant to Texas law, the Court should dissolve the temporary injunction. *Murphy v. McDaniel*, 20 S.W.3d 873, 878 (Tex. App.—Dallas 2000, no pet.) (explaining the circumstance that result in the dissolution of a temporary injunction). Furthermore, the Court should award the \$10,000 bond to Defendants. *Energy Transfer Fuel, L.P. v. Bryan*, 322 S.W.3d 409, 413-14 (Tex. App.—Tyler 2010, no pet.) (citing *DeSantis v. Wackenhut Corp.* 793 S.W.2d 670, 685 (Tex. 1990)). Finally, if the Court deems it necessary, Defendants request equitable or other relief in the form of time to file the change to the 1972 Restrictions or some other form to cure any harm caused to Defendants.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant this Motion, dissolve the temporary injunction, award Defendants the bond, and if the Court deems it necessary, Defendants request equitable or other relief in the form of time to file the change to the 1972 Restrictions or some other form to cure any harm caused to Defendants grant further relief. Defendants also request such other relief as the Court deems proper.

Respectfully submitted,

/s/ Michael L. Navarre

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was electronically served on counsel of record by electronic transmission on this 4th day of December, 2017:

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