

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY
MINUTE ORDER**

DATE: 06/10/2022

TIME: 01:30:00 PM

DEPT: N-27

JUDICIAL OFFICER PRESIDING: Cynthia A. Freeland

CLERK: Michael Garland

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: Chris Lauraitis

CASE NO: 37-2022-00014840-CU-MC-NC CASE INIT.DATE: 04/21/2022

CASE TITLE: City of Escondido vs Bearer [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: City of Escondido

**CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other and Supporting Documents
5/19/2022, 05/13/2022**

APPEARANCES

Alma Gurrola, counsel, present for Plaintiff(s).

Keith Bryant Inglis, Defendant is present.

Karen M Cash, Defendant is present.

Also present on behalf of plaintiff is, Monica Pinaglia, Code Compliance Officer.

The Court hears oral argument and confirms the tentative ruling as follows:

Plaintiff City of Escondido ("Plaintiff")'s motion for a preliminary injunction is granted.

The principles regarding a party's right to a preliminary injunction are well-established. In general, in deciding whether to issue a preliminary injunction, the court must weigh two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits; and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. See *White v. Davis* (2003) 30 Cal. 4th 528, 554. "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" *Butt v. State of California* (1992) 4 Cal. 4th 668, 678.

However, a variation of the foregoing standard applies where, as here, a legislative enactment specifically provides for injunctive relief. See *People v. Uber Technologies, Inc.* (2020) 56 Cal. App. 5th 266, 304. The California Supreme Court has set forth the applicable standard as follows:

Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunction relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant. If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties.

Once the defendant has made such a showing, an injunction should issue only if-after consideration of both (1) the degree of certainty of the outcome on the merits, and (2) the consequences to each of the parties of granting or denying interim relief-the trial court concludes that an injunction is proper. At this stage of the analysis, no hard and fast rule dictates which consideration must be accorded greater weight by the trial court.

IT Corp. v. County of Imperial (1983) 35 Cal. 3d 63, 72-73 ("*IT Corp.*").

Escondido Municipal Code ("EMC") § 1-14 provides that "any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance, and may be, by the city, summarily abated as such." Additionally, EMC § 33-1312 states that "[a]ny building or structure . . . maintained contrary to the provisions of this code, and any use of land, building or premises . . . maintained contrary to the provisions of this code is unlawful and a public nuisance. The city attorney is authorized to immediately commence action or proceedings for the abatement and removal and enjoinder of such nuisance in a manner provided by law, and shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person . . . from maintaining or using . . . property contrary to the provisions of this code."

Plaintiff relies upon its authority under EMC §§ 1-14 and 33-1312 in seeking to enjoin, abate, and prevent Defendants Therese A. Bearer, Karen M. Cash, Michael A. Kluey, and Keith Bryant Inglis (Ms. Cash, Mr. Kluey, and Mr. Inglis shall be referred to collectively as "Defendants") from using and/or maintaining the property located at 2130 W. El Norte Parkway, Escondido, CA 92026 (the "Property") illegally and in a manner constituting a public nuisance. Thus, *IT Corp.*'s standard for issuance of a preliminary injunction applies here.

The court notes that, to date, Ms. Bearer has not been served with either the Summons and Complaint or any applications for an order to show cause why a preliminary injunction should not issue as to her. As a result, this ruling is limited to Defendants. Toward that end, the court finds that Plaintiff has met its initial burden of demonstrating a reasonable probability of success on the merits against Defendants. The evidence shows that on December 12 and 15, 2020, Plaintiff's Code Compliance Division received complaints regarding recreational vehicles, tarpaulins, junk, trash, and debris on the Property. See ¶¶ 3-4 to the Declaration of Monica Pinaglia (the "Pinaglia Decl."); Ex. 1 to Plaintiff's Notice of Lodgment ("NOL"). On December 23, 2020, Code Compliance Officer Monica Pinaglia inspected the Property and observed several vehicles, trailers, tarpaulins, trash, junk, debris, and a cargo container on the Property. See ¶ 6 to the Pinaglia Decl.; Ex. 2 to Plaintiff's NOL.

On January 5, 2021, Ms. Pinaglia conducted a follow-up inspection at which time she observed an attempted cleanup but no significant change to the Property. See ¶ 9 to the Pinaglia Decl. Consequently, Ms. Pinaglia issued to Defendants a Notice of Violation ("NOV") for violations of EMC §§ 6-484(a)(1), 6-484(a)(5)(B), 6-484(a)(6), 29-17, 29-21, and 33-721(a); Ex. 3 to Plaintiff's NOL. On February 3, 2021, Ms. Pinaglia returned to the Property and observed significant cleanup in the back yard, but noted that the cargo container, tarpaulins, and trailers remained on the Property. See ¶ 10 to the Pinaglia Decl. On March 11, 2021, Ms. Pinaglia inspected the Property and observed a "guttled" recreational vehicle in the front yard, a trailer coach in the back yard within one foot of the house with debris and a fence around it, and a canopy near the trailer coach with a fire pit underneath. *Ibid.* at ¶ 12. On March 23, 2021, Ms. Pinaglia, having noticed no changes on the Property, issued Defendants an Administrative Citation and a Notice of Intent to Assess Re-Inspection Fees. *Ibid.* at ¶ 13; Ex. 4 to Plaintiff's NOL. On April 21, 2021,

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Ms. Pinaglia conducted a follow-up inspection and noticed a green plastic sheeting installed on the chain link fence, inoperable recreational vehicles, and tarpaulins on the Property. See ¶ 15 to the Pinaglia Decl. The next day, Ms. Pinaglia issued a second Administrative Citation and an amended NOV. *Ibid.* at ¶ 16; Ex. 3-4 to Plaintiff's NOL. Ms. Pinaglia performed additional inspections of the Property on May 27, June 15, July 1, July 29, August 4, November 2, and December 1, 2021, each time noting that while some improvements were made, the Property remained not code-compliant given the presence of trash, inoperable recreational vehicles, trailer coaches, buses, trailers filled with trash, green plastic sheeting to hide the presence of trash, and a tent made of tarpaulin. See ¶¶ 18-19, 21, 25, 27, 31, 33 to the Pinaglia Decl. This resulted in the issuance of additional NOV's and Administrative Citations. See Ex. 3-4 to Plaintiff's NOL. Ms. Pinaglia performed a final inspection of the Property on April 20, 2022, at which time she observed continued violations of the EMC. *Ibid.* at ¶¶ 35-36; Ex. 5-9 to Plaintiff's NOL.

Based on the foregoing, the court finds that Plaintiff has submitted overwhelming evidence demonstrating that Defendants have failed to comply with EMC §§ 6-484(a)(1), 6-484(a)(5)(B), 6-484(a)(6), 29-17, 29-21. A rebuttable presumption thus arises that the potential harm to the public outweighs the potential harm to Defendants if a preliminary injunction issues. By failing to oppose the motion, Defendants have failed to establish that they would suffer grave or irreparable harm from the issuance of a preliminary injunction. Accordingly, under *IT Corp.* and its progeny, the court need not balance the relative harms to the parties.

In light of the foregoing, the court grants the motion and issues a preliminary injunction immediately enjoining Defendants, and each of them, and their representatives, guests, agents, officers, employees, trustees, tenants, heirs, assigns, and anyone acting on their behalf or in concert with them, from using, allowing, maintaining, and depositing trash, junk, debris, inoperable vehicles, and occupied recreational vehicles and trailer coaches connected to public utilities on the Property and/or using the Property in violation of the law.

Counsel for the plaintiff is directed to prepare Permanent Injunction for the Court's review; and to provide notice.

Cynthia A. Freeland

Judge Cynthia A. Freeland

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