

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-10-02694

The Eaglewood Retreat Homeowners
Association, Inc.,

PLAINTIFF,

vs.

Jason Patno,

DEFENDANT.

ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION

RECEIVED
Nov 28 2022
SC Court of Appeals

This matter came before me at a hearing held on August 25, 2022, on the Plaintiff (“the HOA”)’s motion for a preliminary injunction and Defendant Jason Patno (“Mr. Patno”)’s motion to dismiss the above-captioned action. Because the HOA has failed to make the required showing to obtain a preliminary injunction, the court denies the HOA’s motion for preliminary injunction. Mr. Patno’s motion to dismiss is dealt with in a separate order.

The elements a plaintiff must prove in order to receive a permanent injunction are (1) that the plaintiff will suffer immediate, irreparable harm without the injunction; (2) that the plaintiff’s basis for an injunction is grounded in legal authority (e.g., a statute, restrictive covenants); and (3) that the plaintiff has no adequate remedy at law.” Compton v. S.C. Dept. of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). With regard to a preliminary injunction, the following applies:

“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The plaintiff’s complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. Peek v. Spartanburg Reg’l Healthcare Sys., 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005); County of Richland v. Simpkins, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). Generally, for a

preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Scratch Golf Co., 361 S.C. at 121, 603 S.E.2d at 908; Peek, 367 S.C. at 454-55, 626 S.E.2d at 36.

AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505, 508 (Ct. App. 2009).

This is a suit brought by a homeowners' association seeking damages and injunctive relief. The amended complaint alleges that Mr. Patno has violated the applicable restrictive covenants by operating a business from his home and by parking commercial trucks on the street by his house.

The Plaintiff supports its motion with affidavits filed with its complaint and amended complaint that state, in a general way that largely mimics the allegations of the HOA's pleadings, that it is suffering harm as a result of Mr. Patno operating a business out of his house and parking commercial trucks in the subdivision with which the HOA is associated. The Plaintiff also filed various items of correspondence from Mr. Patno to HOA board members pointing out various covenant violations by others, on which the HOA apparently took no action.

The HOA does not own a lot or house in the subdivision, and the amended complaint does not allege that it does. The HOA's members own property in the subdivision, but none of its members are plaintiffs in this case.

The amended complaint alleges that the HOA "and its members/owners will suffer irreparable harm to the Subdivision, other real property in Eaglewood Retreat, common areas, and the interests, property value, reputation and character of the Association, its members/owners/residents and the Eaglewood Retreat community as a whole from the foregoing breaches by Patno of the Governing Documents, and will continue to suffer such irreparable harm if an injunction is denied." (¶ 30.) The HOA pleads as damages that it "has and will continue to suffer actual, consequential and/or special damages in the form of monitoring Patno's acts and

omissions to obtain and ensure compliance, attorneys' fees and costs, and other allowable charges owed by Patno for the prosecution of this matter and/or enforcement of the Governing Documents, and for the damage to reputation to and property devaluation of the Association, Eaglewood Retreat and its individual properties." (§ 22.)

Here, the court does not need to determine whether the HOA or Mr. Patno will likely succeed on the merits of the litigation. The HOA has not established that it will suffer irreparable harm if the injunction is not granted. The HOA has also not established the inadequacy of a remedy at law.

The HOA is a homeowners' association, not the owner of a house or lot in the subdivision. If the HOA owns any property in the subdivision, no such showing has been made, but any such property would be a pool, tennis courts, perhaps the streets. In any event, the HOA has not submitted proof that the value of any property *the HOA owns* is being affected or is in danger of being affected by anything that Mr. Patno is alleged to have done.

The HOA contends that the court should take into account what the HOA claims is threatened irreparable harm to its members. The court disagrees.

Important to this analysis is that the HOA has no standing to sue for an injunction or any other relief on behalf of its members. "Standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'" Powell ex rel. Kelley v. Bank of America, 665 S.E.2d 237, 241 (Ct. App. 2008) (quoting Black's Law Dictionary 1413 (7th ed. 1999)). Standing goes to the question of a party's right to bring a proceeding. Baird v. Charleston Cnty., 333 S.C. 519, 530 & 530 n. 7, 511 S.E.2d 69 (1999). It is fundamental that only a party with standing may maintain an action. See id.

Standing “consists of the following three elements” as noted by the South Carolina Supreme Court:

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. Natural Resources, 345 S.C. 594, 601, 550 S.E.2d 287 (2001) (internal quotation and quotation-related punctuation marks omitted). “The first element requires *the plaintiff* to suffer an injury in fact, or a particularized harm.” Id. (emphasis added).

The HOA has no standing to pursue an injunction to prevent harm to someone else, including harm to its members. Id. “A corporation is not a natural person and maintains a separate and distinct identity apart from its shareholders.” Mangum v. Maryland Cas. Co., 330 S.C. 573, 576, 500 S.E.2d 125 (Ct. App. 1998). The HOA is not its members but is a separate entity from them. Id.

The HOA is not permitted to seek an injunction to prevent harm to “its members/owners[.]” “to the Subdivision,” or to “other real property in Eaglewood Retreat[.]” Sea Pines Assn., 345 S.C. at 601; Mangum, 330 S.C. at 576. It has no standing to seek an injunction to stop harm to “the interests, property value, reputation and character of [the HOA’s] members/owners/residents and the Eaglewood Retreat community as a whole[.]” Sea Pines Assn., 345 S.C. at 601; Mangum, 330 S.C. at 576. If the HOA’s members are about to suffer irreparable harm and have a viable injunction theory, the affected members can sue for an injunction. The law does not allow the

HOA to obtain an injunction for them. It has no standing to do so. The members of the HOA would have to bring their own cases – and nothing would stop them from doing so.

The HOA contends that it is suffering harm because it must incur attorney’s fees and costs to pursue this action. The proof in this regard is lacking in causation. The HOA has not made any showing to the effect that covenants require the HOA to do any monitoring of Mr. Patno’s behavior or that they require the HOA to take any action to ensure compliance with the covenants. In Section 1, Article X, the covenants provide that “[t]he Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, reservations, liens and charges now or hereafter imposed by the provisions of the [Governing Documents] of the Association.” The HOA has the choice to exercise this right, not the obligation to do so. The attorney’s fees and costs the HOA incurs in this suit are caused by its decision to pursue this suit, not by anything the HOA claims Mr. Patno is doing.

The HOA claims in its amended complaint that it is suffering reputational damage. Reputational damage is the subject of a suit for defamation, not for breach of real property covenants. See Timmons v. News & Press, Inc., 232 S.C. 639, 103 S.E.2d 277, 281 (1958); Smith v. Bradstreet, 63 S.C. 525, 41 S.E. 763 (1902). Also, no evidence has been adduced to the effect that Mr. Patno’s activities have caused or could cause reputational damage to the HOA.

A “proffer of violations, mere citations and accompanying affidavit[.]” are insufficient— “[t]hey are merely evidence of violations, not proof thereof[.]” and do not entitle the HOA to a preliminary injunction, especially in the absence of any actual proof to the effect that harm might befall the HOA without one. Cty. of Richland v. Simpkins, 560 S.C. at 670.

In addition, evidence the HOA filed undercuts its position that it will suffer irreparable harm without the preliminary injunction it seeks. The apparently unaddressed requests by Mr.

Patno that the HOA address similar covenant violations do not help the HOA. Quite to the contrary; they tend to show that the HOA does not regard similar covenant violations by others as threats of irreparable harm. The HOA offers no evidence of why the alleged violations by Mr. Patno portend irreparable harm while these other violations do not.

Further, the HOA has not shown that it has no adequate remedy at law. “The court will reserve its equitable powers for situations when there is no adequate remedy at law.” Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Indeed, that the HOA seeks damages for breach of the covenants indicates that it *does* have an adequate remedy at law. Where there is an at-law remedy available, “an injunction [is] not the appropriate remedy.” Scratch Golf, 361 S.C. at 121-22.

Finally, the court notes that the HOA has not proposed any security for the temporary injunction it seeks. Rule 65(c), SCRPC, provides that:

no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

The required security must be in “an amount sufficient to protect [the enjoined party] in the event the injunction is ultimately deemed improper.” Atwood Agency v. Black, 374 S.C. 68, 646 S.E.2d 882, 884 (2007). Here, the HOA seeks to enjoin Mr. Patno from operating what appears to be the business that sustains his livelihood. Any security for such an injunction would need to be quite large. Id. The HOA does not propose any security at all, and a preliminary injunction cannot issue in the absence of adequate security. Id.

Accordingly, it is therefore hereby ORDERED that the Plaintiff’s motion for a preliminary injunction is denied.

And IT IS SO ORDERED.

The Honorable Diane S. Goodstein
Circuit Judge



Charleston Common Pleas

Case Caption: Eaglewood Retreat Homeowners Association Inc The VS Jason R Patno
Case Number: 2022CP1002694
Type: Order/Temporary Injunction

The motion is hereby Denied!

s/Diane S. Goodstein