

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
THE EAGLEWOOD RETREAT)
HOMEOWNERS ASSOCIATION,)
INC.,)
)
Plaintiff,)
)
vs.)
)
JASON R. PATNO)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-02694

ORDER GRANTING PRELIMINARY
INJUNCTION



THIS MATTER came before the Court on August 25, 2022, on Plaintiff’s, The Eaglewood Retreat Homeowners Association, Inc.’s, Motion for Temporary Restraining Order or Preliminary Injunction, pursuant to Rule 65, SCRPC, against Defendant, Jason R. Patno.

BACKGROUND

Plaintiff, The Eaglewood Retreat Homeowners Association, Inc., (“Association”) is the homeowners’ association for the Eaglewood Retreat community (“Eaglewood Retreat”). Plaintiff filed its motion seeking the Court’s assistance in enforcing the provisions of the Association’s Declaration of Covenants, Conditions, Restrictions and Easements for Eaglewood Retreat (“Declaration”) and the By-Laws of Eaglewood Retreat Homeowners Association, Inc. (“Bylaws”), each as may be amended, recorded in Book L565 at Page 492 on December 9, 2005, and re-recorded in Book H591 at Page 400 on July 17, 2006, with the Charleston County Register of Deeds, South Carolina. Also pertinent are The Eaglewood Retreat Homeowners Association, Inc. Policy Resolution No. 02-2009 Rules and Regulations (“Rules”) recorded January 14, 2019, in Book 0772 at Page 208 with the Charleston County Register of Deeds, South Carolina. The Declaration, Bylaws, Rules, and any promulgated rules, regulations, guidelines, policies and the like hereinafter collectively referred to as the "Governing Documents”, and are public records filed with the Charleston County Register of Deeds Office and are incorporated by reference.

Defendant Jason R. Patno (“Patno”) is alleged to, and allegedly has been at all relevant times hereto, the owner of that real property located at 1079 Eaglewood Trail, Charleston,

Charleston County, South Carolina 29412 (“Home”), which is part of the Association and Eaglewood Retreat.

The Association’s Declaration of Covenants, Conditions, Restrictions and Easements for Eaglewood Retreat (“Declaration”), in pertinent parts, provides:

1. Section 1, Article 1: “Every Owner shall have a right and easement of enjoyment in and to the Common Area..., subject to the following provisions:

(c) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area...”

2. Article¹ referred to as “Use Restrictions”:

a. Section 1: “All the Lots shall be used for single-family residential purposes only, and no business or business activity shall be carried on or upon any Lot at any time, except with the written approval of the Board . . .”

b. Section 12: “No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become annoyance or nuisance to the Owners of other Lots in Eaglewood Retreat.... No lot owner or occupant will make or permit any disturbing noises by himself, his family, servants, employees, or visitors.”

c. Section 16: “No...commercially marked vehicles shall be permitted on the Lots unless such vehicles are stored in a garage...”

The Eaglewood Retreat Homeowners Association, Inc. Policy Resolution No. 02-2009 Rules and Regulations (“Rules”) , in pertinent part, state:

3. No. 1: “All Units shall be utilized for single family residential purposes only. No business or business activity shall be carried on upon any Unit at any time; provided, however,... (ii) to the extent allowed by applicable zoning laws, a private office may be maintained in a Unit as long as such use is incidental to the primary residential use of the Unit, does not violate any applicable law, . . . and does not contribute to parking, traffic or security problems, all in the opinion of the Board of Directors.”

4. No. 2: “A Unit Owner shall not permit or suffer anything to be done or kept on his Unit which will, in the sole opinion of the Board of Directors, . . . (ii) obstruct or interfere with the rights of other Unit Owners, or the Association, or (iii) annoy other Unit Owners by unreasonable

¹ The article number was omitted in the pleadings.

noises or otherwise. A Unit Owner shall not commit or permit any nuisance, immoral, improper, offensive or illegal act in his Unit or on the Common Area.”

5. No. 12(b): except as expressly approved by the Board, “no...truck or commercial vehicle over $\frac{3}{4}$ ton capacity shall be parked on the property....”

The Bylaws, in pertinent part, provide:

6. Section 1(a), Article VII: The Board of Directors shall have the power to “adopt, amend and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct . . . thereon, and to enforce the same [*sic*] establish penalties and fines for the infraction thereof. The Board of Directors may levy reasonable fines against a member for any violation of these bylaws, the Declaration...or the Rules....”

7. Section 1(b), Article VII: The Board the right of the Association to "suspend the voting rights and right to use the recreational facilities of a member . . . for infraction of published rules and regulations....”

Further, the City of Charleston has an applicable ordinance which prohibits the parking of commercial vehicles longer than twenty (20) feet.

LAW/ANALYSIS

The South Carolina Supreme Court states courts should consider equitable doctrines when determining whether to enforce a restrictive covenant and enjoin a landowner from using land in a manner that violates a covenant, although there is no formulaic balancing test. *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009) (“Courts should consider equitable doctrines when determining whether to enforce a restrictive covenant and enjoin a landowner from using land in a manner that violates the covenant”).

A plaintiff’s entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation. *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480–81, 167 S.E.2d 313, 315 (1969). Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. *Roach v. Combined Util. Comm'n*, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct.App.1986).

This Order is based upon the grounds that it appears to the Court, for the purposes of a Temporary Restraining Order, that (1) The Eaglewood Retreat Homeowners Association, Inc.'s will suffer irreparable harm if the injunction is not granted; (2) The Eaglewood Retreat Homeowners Association, Inc.'s has a substantial likelihood of success on the merits in the underlying suit; and (3) there is an inadequate remedy at law. *See Scratch Golf Co. v. Dunes West Residential Golf*, 361 S.C. 117, 603 S.E.2d 905 (2005).

Allegedly, Patno's operation of a 24/7 professional towing business and service at and from the Home, including the allegations of frequent driving and dispatching of Tow Trucks at all hours of the night, and the improper parking, keeping and/or storage thereof at the Home and on the streets of Eaglewood Retreat, has been and is disruptive, noisy, offensive, an annoyance, a nuisance, as well as a safety concern to and for the Association, and other Owners, Members and residents in Eaglewood Retreat in direct violation and breach of the Governing Documents; and additionally in violation of a City of Charleston ordinance prohibiting the parking of commercial vehicles longer than twenty (20) feet.

Allegedly, Patno has not disputed that he is running a twenty-four (24) hour professional towing service, CAP Towing, from the Home and was using the address of the Association's pavilion at 1078 Eaglewood Trail for his business address. Further, beginning allegedly sometime in January 2022, Patno began parking his large, diesel, commercial tow truck, in excess of $\frac{3}{4}$ ton capacity, marked with "CAP Towing", at the Home and/or on the streets of the Eaglewood Retreat. It is alleged that around March 29, 2022, Patno added a second large, diesel, commercial tow truck, in excess of $\frac{3}{4}$ ton capacity; a flatbed Dodge RAM rollback, to his fleet, which he also parked at the Home and/or on the streets of Eaglewood Retreat. Allegedly both of these Tow Trucks are, upon information and belief, in excess of twenty (20) feet in length, and as large, diesel, commercial tow trucks in excess of $\frac{3}{4}$ ton capacity, both make significantly more noise than a regular car or truck. Furthermore, it is alleged that since on or about January 18, 2022, Patno has been and is answering/dispatching tow and service calls from the Home, which requires the frequent driving of these Tow Trucks through the neighborhood to and from the Home at all times of the day and night as part of the operation of his twenty-four (24) hour professional towing service.

IT APPEARING TO THE COURT THAT based on the argument of counsel, the Association's Amended Verified Complaint, its Motion for Temporary Restraining Order or Preliminary Injunction, and the Amended Affidavit of Shafi Keisler, the Court finds that:

- a. Patno's alleged violations of the Governing Documents would be severe and would cause immediate and irreparable injury to the Association, the Properties, and to its Owners, Members and residents and their property in the form of disruptions and safety concerns;
- b. in order to maintain the status quo and prevent alleged further and additional irreparable harm from being suffered by the Association, the Properties, and the Owners, Members and residents and their property, an order by this Court is necessary since the Association has no adequate remedy at law because of the alleged disturbances and safety hazards to the Association and other Owners, Members and residents in Eaglewood Retreat;
- c. all of the alleged actions described in the foregoing as they have allegedly been and are allegedly noxious, offensive, noisy and disturbing activities carried on at the Home and in Eaglewood Retreat; the annoyance and nuisance to other Owners, Members and residents;
- d. no substantial evidence was presented of the likelihood of harm to Patno from the granting of the Association's motion;
- e. the Court finds that bond should be set; and
- f. the Association will likely succeed on the merits at the trial of this action.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant Jason R. Patno is hereby enjoined from:

1. operating a business at or out of the Property, including the operation of a 24/7 towing service and business from and at the Home, including, the driving and dispatching of his Tow Trucks, and the improper parking, keeping and/or storage of the Tow Trucks at the Home and/or the streets of Eaglewood Retreat;
2. using the Property for any non-residential use;
3. the keeping, storing and/or parking, including overnight, of his Tow Trucks on the Home and/or the streets of Eaglewood Retreat;
4. any further or future similar acts or omissions.

IT IS FURTHER ORDERED that Plaintiff shall, within five (5) days of the filing of this Order, deposit the sum of Five Thousand and 00/100 Dollars (\$5,000.00) with the Clerk of Court or a good and sufficient bond or undertaking as approved by the Clerk for the same amount.

IT IS FURTHER ORDERED that this Preliminary Injunction shall remain in effect until final adjudication of this action, and violation of this order is punishable by the contempt powers of the Court.

AND IT IS SO ORDERED!

The Honorable Diane Goodstein
Presiding Judge

This ____ day of October, 2022
Dorchester, South Carolina



Charleston Common Pleas

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

It is so Ordered!

s/Diane S. Goodstein