

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SUSQUEHANNA LEGAL AID FOR : NO. CV-2024-01041
ADULTS AND YOUTH D/B/A/ SLAAY, :
Plaintiff, :
vs. :
 : CIVIL ACTION - LAW
MARK AND SUZANNE WINKELMAN and :
THE PAJAMA FACTORY, LLC and P.J. :
HOLDING, LLC, :
Defendants. : Second Petition
 : for Preliminary Injunction

OPINION AND ORDER

This matter came before the Court on November 18, 2024, for hearing on the Plaintiff’s Second Petition seeking a preliminary injunction, filed November 4, 2024. Both Plaintiff and the Defendants appeared with counsel. After hearing, the Petition is granted in part and dismissed in part, without prejudice to re-file, for the reasons more fully set forth below.

FINDINGS OF FACT:

1. Defendants Mark and Suzanne Winkelman (hereinafter collectively “Winkelman”) are the members of a limited liability company named P.J. Holdings, LLC, which in turn is the owner of one or more parcels of real property situate at 1307 Park Avenue, Williamsport, Pennsylvania 17701. Winkelman are the members of a separate limited liability company known as the Pajama Factory, LLC, which is the operating entity for the real estate. For ease of reference, both limited liability companies will hereinafter be referred to as the “Pajama Factory” and the real property owned and operated by those limited liability companies will be referred to as the “Premises.”
2. The Premises contains eight (8) buildings, several of which have been leased to commercial tenants. The Plaintiff is one of those tenants.
3. According to Winkelman, the Premises contains approximately 300,000 square feet of leasable space, of which approximately 240,000 has a functional sprinkler system, and 60,000 does not.

4. According to Winkelman, all but three (3) of the commercial tenants at the Premises are occupying space which is sprinklered.
5. As a result of an inspection conducted by an agency of the City of Williamsport (hereinafter the “City”), the City served Winkelman with a notice—dated July 18, 2024—introduced into evidence at Exhibit G, which directed the Defendants to vacate the Premises, unless and until the entire Premises is served by a functional sprinkler system. The notice gave Defendants an option, in the interim, of providing a “fire watch” defined as in person security by trained personnel, alert for signs of a potential fire, on a twenty-four (24) hour per day, seven (7) days per week basis (hereinafter the “Eviction Notice”).
6. Defendants filed a timely appeal to the Notice, which was the subject of an appeal hearing before an agency of the City (hereinafter the “Eviction Appeal”). Defendants have a response from the City which granted some, but not all of the relief sought by the Defendants.
7. During the pendency of the Eviction Appeal, Defendants have engaged fire watch services at the Premises. Because of the fire watch service, the effect of the Eviction Notice has been stayed.
8. Plaintiff introduced no testimony to suggest that the Defendants intend to terminate the fire watch service. Thus, there is no testimony that Plaintiff is currently threatened with eviction.
9. In the event that the fire watch service is terminated by Defendants, and unless the City withdraws or modifies the Eviction Notice, Plaintiff may be threatened with eviction.

THE LEGAL TEST FOR A PRELIMINARY INJUNCTION:

The six (6) part test for issuance of a preliminary injunction is settled Pennsylvania law:

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. Third, the party must show that a preliminary injunction will properly restore the parties to

their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. Sixth, and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest. *Summit Towne Centre*, at 646–47, 828 A.2d at 1001. If a petitioner fails to establish *314 any one of the aforementioned prerequisites, a reviewing court need not address the others. *Id.*, at 646, 828 A.2d at 1001.

As stated above a plaintiff seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by money damages. *Summit Towne Centre*, at 646, 828 A.2d at 1001. **In order to meet this burden, a plaintiff must present "concrete evidence" demonstrating "actual proof of irreparable harm."** *Kessler*, 851 A.2d at 951. **The plaintiffs claimed "irreparable harm" cannot be based solely on speculation and hypothesis.** *Id.*, 851 A.2d at 951. Moreover, for purposes of a preliminary injunction the claimed harm must be *irreversible* before it will be deemed irreparable. *See Sovereign Bank v. Harper*, 674 A.2d at 1085, 1093 (Pa.Super.1996).

Greenmoor, Inc. v. Burchick Const. Co., 908 A.2d 310, 314 (Pa. Super. Ct. 2006) (emphasis added).

Further, our Supreme Court has explained that the factors necessary to support the issuance of a preliminary injunction are not considerations, but required elements:

In ruling on a preliminary injunction request, a trial court has “apparently reasonable grounds” for its denial of relief where it properly finds that any one of the following “essential prerequisites” for a preliminary injunction is not satisfied. *See Maritrans GP*, 602 A.2d at 1282–83 (requirements for preliminary injunction are “essential prerequisites”); *County of Allegheny v. Commonwealth*, 518 Pa. 556, 544 A.2d 1305, 1307 (1988) (“For a preliminary injunction to issue, every one of the prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the

others.”). First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. *Singzon v. Dep't of Pub. Welfare*, 496 Pa. 8, 436 A.2d 125, 127–28 (1981); *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 471 Pa. 1, 369 A.2d 1164, 1167–68 (1977); *Ala. Binder & Chem. Corp. v. Pa. Indus. Chem. Corp.*, 410 Pa. 214, 189 A.2d 180, 184 (1963). Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. *Maritrans GP*, 602 A.2d at 1283; *Valley Forge Historical Soc'y v. Washington Mem'l Chapel*, 493 Pa. 491, 426 A.2d 1123, 1128–29 (1981); *Ala. Binder & Chem. Corp.*, 189 A.2d at 184. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. *Valley Forge Historical Soc'y*, 426 A.2d at 1128-1129; *Herman*, 141 A.2d at 577–78. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. *Anglo–Am. Ins. Co. v. Molin*, 547 Pa. 504, 691 A.2d 929, 933–34 (1997); *Maritrans GP*, 602 A.2d at 1283–84; *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 499 Pa. 39, 451 A.2d 434, 440 (1982); *Singzon*, 436 A.2d at 127–28. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. *John G. Bryant Co.*, 369 A.2d at 1167–71; *Albee Homes, Inc. v. Caddie Homes, Inc.*, 417 Pa. 177, 207 A.2d 768, 771–73 (1965). Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest. *Maritrans GP*, 602 A.2d at 1283; *Philadelphia v. District Council 33, AFSCME*, 528 Pa. 355, 598 A.2d 256, 260–61 (1991).

Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1001 (Pa. 2003).

ISSUE PRESENTED:

WHETHER PLAINTIFF HAS ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO A POTENTIAL EVICTION OF PLAINTIFF FROM THE PREMISES.

RESPONSE TO ISSUE PRESENTED:

PLAINTIFF HAS NOT ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO A POTENTIAL EVICTION OF PLAINTIFF FROM THE PREMISES, BEYOND THE RELIEF TO WHICH DEFENDANTS HAVE AGREED, ON THE RECORD DURING THE HEARING.

DISCUSSION:

PLAINTIFF HAS NOT ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO A POTENTIAL EVICTION OF PLAINTIFF FROM THE PREMISES, BEYOND THE RELIEF TO WHICH DEFENDANTS HAVE AGREED, ON THE RECORD DURING THE HEARING.

During the hearing, Defendants agreed that they would continue the fire watch in place for no less than thirty (30) days after notice to the Plaintiffs, in order to provide them some relief from the threat of immediate enforcement of the Eviction Notice. There is little doubt that immediate enforcement of the Eviction Notice would have a negative effect upon the Plaintiff and the dozens of other tenants at the Premises. At least some of those negative effects could not be easily remedied in money damages. Relocation of a small business requires that the owner notify customers and clients of the new location, establish telephone and utility services, relocate staff, and arrange relocation of furniture, equipment, computer facilities and the like. Requiring dozens of small businesses at a single location to all do so immediately would obviously be very disruptive. The Court notes that the Premises is particularly appealing to small or solely owned businesses. Immediate relocation might prove fatal to a small business operated by an individual with limited resources.

The Court concludes that the interim relief offered by the Defendants is sufficient to meet Plaintiff's concerns, in the short term. The Court will enter an interim Order, consistent with the relief offered by Defendants at the hearing.

ORDER

AND NOW, this 19th day of November, 2024, for the reasons more fully set forth above, Plaintiff's Second Petition seeking a Preliminary Injunction is granted in part and denied in part, without prejudice. It is hereby ORDERED and DIRECTED as follows:

1. Defendants are enjoined from terminating the fire watch service currently in place at 1307 Park Avenue, Williamsport, Pennsylvania 17701, without at least thirty (30) days written notice to Plaintiff. Nothing set forth in this paragraph will prevent Defendants from modifying the fire watch service or discontinuing the fire watch service, if Defendants receive written confirmation from the City of Williamsport that the Eviction Notice is withdrawn, or that the fire watch service as modified is adequate to ensure that the City of Williamsport will not enforce the Eviction Notice.
2. Nothing set forth herein is intended to prevent Plaintiff from re-filing the Petition, if future events support the conclusion that Plaintiff is in imminent threat of wrongful eviction from the Premises.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
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