

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

CONCERT WOODMORE, LLC

RS

Plaintiff,

v.

PLEASANT PROSPECT HOMEOWNERS
ASSOCIATION, INC.

Case No.: C-16-CV-23-004228

Defendant.

* * * * *

**PLAINTIFF'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, by and through its attorneys Matthew D. Skipper, Jeffrey A. Kahntroff, and Skipper Law, LLC, files this Emergency Motion for Temporary Restraining Order against Defendant Pleasant Prospect Homeowners Association, Inc. pursuant to Md. Rule 15-501 *et seq.* and in support thereof states as follows:

1. Contemporaneously with this Motion, Plaintiff has filed a Complaint with this Court seeking relief based on the following causes of action against Defendant: (1) Injunctive Relief in the form of a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction.

2. The substance of Plaintiff's claims is that the Defendant has threatened to block public road access to Plaintiff Country Club effective September 15, 2023 unless Country Club staff and country club members pay an exorbitant fee (more than \$20,000 per month) for easy and guaranteed access to this public road. *See generally* Complaint; Exhibits to Complaint; Plaintiff's Memorandum in Support of Motion of Motion for temporary Restraining Order.

3. Plaintiff was notified on Labor Day of this new restriction, and responded the next day, asking Defendant to reverse its position within 48 hours.

4. Defendant responded on Monday, September 11, 2023 that it would not retract the fee or consider any resolution that involved retracting the fee.

5. This Emergency Motion is supported by a concurrently filed Memorandum in Support of Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, Plaintiff's proposed Temporary Restraining Order, the Affidavit of General Manager Daniel Hayle, the allegations of the Complaint, and supporting exhibits thereto.

6. Pursuant to Maryland Rules §§ 15-502 *et seq.*, undersigned counsel for Plaintiff incorporates by reference an Affidavit of Notice presently to be filed more particularly setting forth Plaintiff's efforts to give notice of this Emergency Motion to the Defendant.

7. Given the circumstances of this Motion, Plaintiff requests that no bond be required, as Plaintiff is merely seeking to be provided access through a public road.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

1. Schedule an emergency hearing on this Emergency Motion for a Temporary Restraining Order and Preliminary Injunction.
2. Grant a Temporary Restraining order and Preliminary Injunction restraining and enjoining Defendant from implementing Pleasant Prospect Access Fee Policy (as defined in the Complaint and set forth in Exhibit 9 to the Complaint) and deactivating Plaintiff's gate cards; and
3. Award any other relief deemed just and appropriate.

REQUEST FOR EMERGENCY HEARING

Plaintiff respectfully requests an emergency hearing on this Motion.

Respectfully submitted,

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Attorneys for Plaintiff

RULE 20-201 (f)(1) CERTIFICATE

I HEREBY CERTIFY, that pursuant to Maryland Rule 20-201 (f)(1), this submission either does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously to Maryland Rule 20-201 (f)(1).

Matthew D. Skipper /s/
Matthew D. Skipper (CPF# 1012160148)

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CONCERT WOODMORE, LLC

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Plaintiff,

v.

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PLEASANT PROSPECT HOMEOWNERS
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Defendant.

* * * * *

**MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

AND

REQUEST FOR A HEARING

NOW COMES the Plaintiff, by and through its attorneys, Jeffrey A. Kahntroff and Matthew D. Skipper of Skipper Law, LLC, and pursuant to Maryland Rules 15-501 through 15-505, hereby moves for a Temporary Restraining Order restraining and enjoining Defendant from interfering with access to Pleasant Prospect Road as more fully set forth herein.

STATEMENT OF FACTS

Plaintiff (hereafter “Country Club”) hereby incorporates all factual allegations in its Complaint as if set forth herein. The Country Club is only accessible through a road that was dedicated to public use as part of the subdivision, and later to the county. Defendant is interfering with the only access to the Country Club in an unlawful manner that would cause irreparable harm. The Country Club is seeking that this Court order that the status quo be maintained by means of a temporary restraining order until this matter can be more fully decided pursuant to agreed-upon

dispute resolution procedures. Below is the reasoning for why this relief is proper¹.

STANDARD OF REVIEW

Pursuant to Md. Rule 15-504(a), a temporary restraining order may be granted only if (1) it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the party seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction, and (2) the court examines and makes appropriate findings regarding:

- (A) the likelihood that the moving party will succeed on the merits;
- (B) the balance of harm to each party if relief is or is not granted;
- (C) whether the moving party will suffer irreparable injury unless the order is granted; and
- (D) a determination that granting the order is not contrary to the public interest.

See also Fuller v. Republican Central Committee of Carroll County, 444 Md. 613, 636 (2015); *Dep't of Transp. v. Armacost*, 299 Md. 392, 404–05 (1984).

ARGUMENT

Plaintiff will suffer immediate, substantial and irreparable harm if the TRO is not granted as set forth below. When reviewing the four factors, Country Club is entitled to a TRO.

I. Plaintiff is likely to succeed on the merits.

Plaintiff will succeed on the merits for multiple reasons. First, a private entity cannot place any restriction on the public's right to use a public road. Second, even under the Gatehouse Agreement (Exhibit 6 to the Complaint) whereby the County allowed the erection and operation of a gatehouse, the agreement indicated in unambiguous terms that the "gates at the Western entrance of Pleasant Prospect **shall remain open**" and that Defendant must provide "**free and easy**

¹ The exhibits to the Complaint are incorporated herein as documentary support for the allegations.

access to the public.” Defendant is failing to keep the gates open and its guard is interfering with free and easy access to the public. Exhibit 11, Affidavit of Daniel Hayle. Third, even under the parties’ agreement, Defendant was required to provide easy access through gate card by payment of cost of the gate card. Exhibit 7 at ¶ 5. Defendant was required by the County to pay for the cost of maintenance of the gatehouse. Exhibit 5 at ¶ 1. For reasons including but not limited to the foregoing, a Court will find that Defendant cannot implement its Pleasant Process Access Fee Policy.

II. The ‘balance of convenience’ favors the Plaintiff.

The balance of convenience is the most important of the four factors to be considered by the trial court in deciding to grant or deny interlocutory or preliminary injunction. *See Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md. App. 290, 304 (1997). Here, the balance of convenience test clearly weighs in Plaintiff’s favor. Defendant will suffer **no harm** from continuing to bear the cost for the gatehouse as it is required to do by agreement with the County, the agreement with Plaintiff, and the law. Exhibits 5, 6 and 7, noted *supra*. Defendant has paid to maintain this gate for years without issue.

Plaintiff, on the other hand, would be highly inconvenienced and injured if this Pleasant Prospect Access Fee Policy is not immediately enjoined before it takes effect. Those injuries, which are set forth in the following section, are incorporated herein. Those substantial harms are clearly more damaging to Plaintiff than it would be to continue to require Defendant not to interfere with access to a public road.

III. Plaintiff will suffer immediate, substantial, and irreparable injury unless the order is granted.

This policy is set to take effect September 15, 2023, and thus it is immediate. The nature of the injuries which Plaintiff will suffer, as previously discussed, will be substantial and

irreparable. Those injuries include: (1) jeopardizing the Country Club's relationship with its members, who have been promised access to the Country Club without being subjected to intrusive interrogations and photographs by the HOA's guard; (2) causing existing Country Club members to cancel their memberships, who almost certainly would never return; (3) preventing new potential members from joining the County Club due to the costs and lack of convenient access to the Club; (4) preventing individuals access altogether, by leaving access to the County Road to the gatehouse guard's discretion; (5) damaging Country Club's reputation; (6) causing financial hardship to Country Club, who uses many of its 400 gate cards for its staff; (7) causing a public safety hazard, and traffic congestion; (8) thwarting access to a County Road, which is barred by law, the recorded covenants, and the contract between Defendant and Plaintiff.

The injury will be irreparable because members who cancel memberships or fail to join are unlikely ever to come back. Altering membership within a club alters its entire fabric, and it is difficult to measure the exact effect as certain members joining leads to other friends, families, and colleagues of theirs joining as well. There is also no remedy at law for the reputational damage this new fee upon the members would cause. There is likewise no adequate remedy at law for the harm that could flow from the public safety hazard of backing traffic onto Woodmore Road. The TRO merely seeks to maintain the status quo to prevent these irreparable injuries until a final decision is reached.

IV. Granting a temporary restraining order is in the public interest.

The public interest weighs heavily in favor of the Court granting this motion. This matter deals with an HOA attempting to restrict access to a public road – not a private HOA road. Allowing a private entity to control access to a public road, through means of its selected gatehouse attendant, is against the public interest. It is further against public interest to condition access to a

public road upon answering a variety of questions and photographing one's license plate.

Additionally, Defendant's action would further be against public interest by creating congestion upon Woodmore Road and creating related safety issues. Defendant's unilateral policy would put Country Club into breach of its contract with third parties, which is against the public interest.

CONCLUSION

Plaintiff has shown immediate, substantial, and irreparable injury, and met the four factors which the Court must consider in deciding to grant an interlocutory injunction. Thus, this Honorable Court should grant the relief requested in the motion related to this memorandum.

REQUEST FOR HEARING

Plaintiff respectfully requests a hearing on its Motion for a Temporary Restraining Order.

Respectfully submitted,

/S/ MATTHEW D. SKIPPER

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