

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

CENTRAL VALLEY SIERRA ASSOCIATES vs CITY OF PATTERSON
Plaintiff Defendant

RE: Ruling on Defendant’s Petition to Compel Arbitration and Plaintiff’s Motion for Preliminary Injunction

Case Number: CV-23-005444

JUDGE: J. Freeland

Bailiff: none

Date:2/8/2024

Clerk: N. Nelson

Reporter: none

Location: Modesto

(a) Defendant’s Petition to Compel Arbitration— **GRANTED.**

After consideration of the moving and opposing papers, the terms of the subject Development Agreement at issue herein, and the arguments of counsel, the Court finds that the subject contract between the parties contains a valid arbitration agreement with a delegation clause granting the arbitrator the exclusive authority to determine the issues of arbitrability discussed in the instant motion. (*Aanderud v. Superior Court (Vivint Solar Developer, LLC)* (2017) 13 Cal.App.5th 880; *Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413.)

Therefore, the matter is compelled to arbitration, and all disputes regarding the scope of arbitrability of the issues raised herein should be determined by the arbitrator, pursuant to the delegation clause contained in the agreement.

(b) OSC RE Preliminary Injunction— **GRANTED.**

By way of this preliminary injunction, CVSA seeks to enjoin the City of Patterson from (1) conducting a “second reading” of Ordinance 870 (the “Ordinance”), pursuant to which the City seeks to revoke CVSA’s Conditional Use Permit (“CUP”) to operate a cannabis business in the City; (2) permitting the Ordinance to go into effect; and/or (3) enforcing the Ordinance and/or the revocation of the CUP; and/or prohibiting CVSA from continuing to conduct business under the CUP.

A party seeking a preliminary injunction first must show an imminent threat of irreparable harm should the preliminary injunction not issue. (*Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.) Upon such a showing, the trial court must then evaluate two interrelated factors: (1) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief; and (2) the likelihood that the plaintiff will prevail on the merits. (*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.” (*Butt v. State of California* (1992) 4 Cal.4th 668, 678.) The moving party bears the burden of proof on each of those issues. (See *O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

Balance of Harms

There is no question here that the balance of harms favors CVSA. Allowing the City to proceed with revocation of CVSA's CUP will cause CVSA a great deal of irreparable harm. CVSA will be forced to close, at least for the duration of litigation, which will likely be more than a year. Realistically, it is unlikely that CVSA would be able to recover from that closure; it would be catastrophic. In contrast, the prohibition does not actively harm the City in the way that forcing CVSA to close during the pendency of proceedings would create real economic harm to the business and its employees would do.

Likelihood of Success on the Merits

CVSA has also met its burden of establishing a probability of success on the merits. CVSA has raised plausible arguments regarding why the Public Benefits payment is illegal and also why the Planning Commission's and City Council's actions were improper. As to the City's points in opposition, they are not persuasive enough to indicate to the Court that the likelihood of success on the merits is so low, the preliminary injunction should be denied. The challenge to the City's decision to revoke the CUP falls outside of the DA and its adoption; therefore, the limitations period set forth in section 10.9 of the DA is not an issue here. And while it is possible that the Mitigation Fee Act found in Government Code § 66005 does not apply to CVSA, that is not the only legal authority cited. As for the City's argument that the federal Constitution does not apply because cannabis is not legal under federal law, the Court doubts the value of this argument and notes that the City did not cite any authority in support of it. Moreover, the Court observes that there is also a state constitution with very similar principles regarding property that would apply, even if the federal Constitution did not.

Bond

A bond is required on the grant of a preliminary injunction. (Code Civ. Proc., §529.) "[T]he trial court's function is to estimate the *harmful effect* which the injunction is likely to have on the restrained party, and to set the undertaking at that sum." (*Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14 (*Abba Rubber*), italics added [finding \$1,000 bond inadequate where defendant shows possible lost profits of \$315,000].) Costs of defense to litigate the case to defeat the preliminary judgment count. (*Id.*, at p. 15.)

The City asks for a bond in the amount of the back Public Benefits it claims it is owed: \$1,074,250. (See 11/15/23 Opp. at p. 17:11-14.) CVSA has correctly argued that this amount does not represent the harmful effect of the injunction.

Without any concrete data from the City, the Court was forced to speculate regarding the likely harmful effects of the injunction and their possible costs. The City will of course have, "attorney's fees and expenses ... incurred in either prosecuting an appeal of the preliminary injunction, or defending at trial against those causes of action upon which the preliminary injunctive relief had been granted." (*Abba Rubber, supra*, 235 Cal.App.3d, at p. 16.) The Court estimates the City's attorneys' fees in this case to be around \$100,000. Then there are the lost opportunity costs—while this case is pending, the City will be unable to shut down CVSA and issue a new permit to a different cannabis dispensary that might generate revenue for it. The flip side is that a new cannabis dispensary would take a while to start operations, during which time no income would be generated.

For the above reasons, the Court sets bond at \$100,000.

Request for Judicial Notice

In support of its opposition, the City asked the Court to take judicial notice of the following:

1. Chapter 6.56 of the Patterson Municipal Code, entitled "Cannabis Business Program;" and
2. City of Patterson Resolution 2017-14.

Pursuant to Evidence Code §§ 452 and 453, the unopposed request for judicial notice is granted.

PROOF OF SERVICE BY MAIL

[1013a(3) C.C.P.]

STATE OF CALIFORNIA)

) SS

COUNTY OF STANISLAUS)

I am over the age of 18 years and employed by the Superior Court of the State of California, County of Stanislaus, and not a party to the within action. I certify that I served a copy of the attached **Ruling on Defendant's Petition to Compel Arbitration and Plaintiff's Motion for Preliminary Injunction** by placing said copy in an envelope addressed to the following:

**JEFF AUGUSTINI Esq
LAW OFFICE OF JEFF AUGUSTINI
9160 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618**

**ANGELA SCHRIMP DELAVERGNE
WHITE BRENNER LLP
1414 K STREET, 3RD FLOOR
SACRAMENTO, CA 95814**

Said envelope was then sealed and postage thereon fully prepaid, and thereafter was on 2/8/2024 deposited in the United States mail at Modesto, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2/8/2024 at Modesto, California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

By:

Deputy Clerk: Nicole Nelson