Morning Star, LLC v. Keith B. Canter et al
2:22-cv-04973 JVS (MAR)

TENTATIVE Order Regarding Motion for Preliminary Injunction

Plaintiff Morning Star, LLC ("Morning Star") submitted an ex parte application for a Temporary Restraining Order and an Order to Show Cause for a Preliminary Injunction. See Ex Parte Application, Dkt. No. 17 ("Application"). Defendants Keith Canter and Karen Schoen, Trustees of the Canter Schoen Family Trust ("Trustees") opposed the application. See Opposition to Ex Parte Application, Dkt. No. 18 ("First Opp'n."). Morning Star responded. See First Reply in Support of Ex Parte Application, Dkt. No. 19 ("First Reply"). The Court granted the application as to its request for an Order to Show Cause for a Preliminary Injunction and denied all other requested relief. See Order Granting Plaintiff's Ex Parte Application for Order to Show Case Re: Preliminary Injunction, Dkt. No. 20 ("Order"). In accordance with the Court's order, Morning Star submitted a Response, and Defendants submitted an Opposition. See Second Reply to OSC re Preliminary Injunction, Dkt. No. 22 ("Second Reply"); Opposition to OSC re Preliminary Injunction, Dkt. No. 27 ("Second Opp'n.").

The Court held a hearing on the Order to Show Cause on September 12, 2022 in which Morning Star requested leave to file additional briefing to address issues Trustees raised in their second opposition. The Court granted Morning Star's request, and the parties filed additional briefing. See Dkt. No. 30 ("Third Reply"); Dkt. No. 36 ("Third Opp'n.").[1]

For the following reasons, the Court **DENIES** the motion.

I. BACKGROUND

A. The Restrictive Covenant

[1] The parties raise issues in the Third Reply and Third Opposition that are immaterial to deciding the limited question of whether the Court should enjoin Trustees from continuing construction. Therefore, if the Court does not address a factual or legal issue raised by the parties' briefings, it is because the Court finds it unnecessary to do so at this juncture.

On August 24, 1994, the predecessor owner of Morning Star's and Trustees' properties executed and recorded a restrictive covenant running with the land for Tract Number 45585. Declaration of Daniel Friedlander, Ex. A, Dkt. No. 12-2 ("Covenant"). The Covenant pertains to Lot 16 (Trustees' property) and Lot 17 (Morning Star's property). Id. The Covenant's stated purpose is to "impose certain restrictive covenants" on both lots for their mutual "privacy and benefit." Id. In order to achieve this goal, the Covenant imposed, among other things, a height restriction on improvements on Lot 16, now owned by Trustees. Id. at Art. II, Sec. 3. It states that "[n]o improvements of any kind, size or type may be constructed, placed or maintained on Lot 16 of the Property greater than eighteen (18) feet above the grade of Lot 16 of the Property as reflected on the Tract Map of the Property, or greater than one story in any event including but not limited to, a residence, garage, or any other appurtenant structure or outbuilding." Id. In order to give effect its provisions, the Covenant states that the "Dominant Tenament" has the right to enforce the Covenant's provisions against the "Servient Tenament "by any proceeding at law or in equity." Id. at Art. III, Sec. 1.

B. Construction on Lot 16

Trustees purchased Lot 16, located at 6362 Sea Star Drive, Malibu, California 90265, in April, 2018 with the intention to build a house on it. Declaration of Karen Elise Schoen, Dkt. No. 27-3, at ¶ 3 ("Schoen Decl."). Trustees submitted the plans for construction, including the floor plan, to the City of Malibu in March, 2019. Id. at ¶ 5. The plans included the entire layout of the home, including the portion at issue here, the second unit above the garage. Id. at ¶¶ 4-5. The structure is "predominantly a single-level" building, with one portion, a bedroom suite totaling 578 square feet located above the garage. Id. at ¶ 4. The entire home, including the additional bedroom suite, does not exceed 18 feet in height. Id.; Ex. 1. Importantly, the plans submitted to the City noted in several places that there would be a second story unit above the garage. See Declaration of Daniel Friedland, Dkt. No. 17-3, at ¶ 8; Ex. H ("Friedland Decl."); Declaration of Patrick Nazemi, Dkt. No. 17-2, at ¶ 15, Ex. C ("Nazemi Decl.").

In addition to obtaining all required permits and approvals from the City of Malibu, Trustees complied with the City's notice requirements by providing a radius map and list of property owners and occupants residing within 500 feet of the property. Schoen Decl., at ¶ 7; Ex. 2. On August 6, 2020, the City's planning

department mailed the Notice of Application to applicable property owners and occupants. Id. at ¶ 8. Trustees also conspicuously posted notice on the property itself. Id. at ¶ 9. On August 27, 2020, the City mailed a Notice of Decision of Trustees' plans. The language of both Notices described the construction as "a new 18 foot tall, 5,461 square-foot single-family residence, including a 578 square-foot attached second unit." Friedland Decl., at ¶ 8; Exs. F, G.

Both the City and Trustees were aware of the Covenant during this process. Id. at ¶ 10. In June, 2020, the City requested that Trustees confirm they were in compliance with the Covenant, in addition to the City's own development standards. Id. Trustees' attorney sent a letter to the City's Planning Director with his interpretation that, as long as the overall height of the structure remained at or below 18 feet, it would not run afoul of the Covenant. Id. The City accepted this explanation and permitted Trustees to move forward with their construction. Id.

Prior to beginning construction, the City required Trustees to erect story poles connected by sheets of plastic to demonstrate the approximate height and shape of the future structure. Id. at ¶ 6. The purpose of this practice is to give interested parties an opportunity to object to the proposed structure prior to construction if they anticipate any view blockage will occur. Id. The story poles were in place from July, 2020 through October, 2020, and no objections were submitted to the City. Id. Trustees began construction in the summer of 2021. Id. at ¶ 16.

C. The Present Action

Shortly after Trustees commenced construction, Morning Star objected to numerous of Trustees' practices, such as the amount of dust and noise created by the construction.[2] Nazemi Decl., at ¶ 20. However, Morning Star was not aware of, and therefore did not object to, Trustees' plans to include a second story above

[2] Trustees argue that diversity of citizenship is destroyed because Nazemi, the beneficiary of the Morning Star Trust and a citizen of California, claims to be the real party in interest and "the owner of the property" in the declaration he submitted in his Third Reply. See Third Opp'n at 3. However, the law in the Ninth Circuit is clear that the beneficiary of a trust is not a real party in interest, does not have standing to sue to enforce the trust, and their citizenship is therefore irrelevant for purposes of diversity jurisdiction. See Demarest v. HSBC Bank USA, 920 F.3d 1223, 1231 (9th Cir. 2019).

their garage until July 2022. Id. at ¶ 18. Until that point, Patrick Nazemi, Morning Star's tenant who lived in the property located on Lot 17, had not noticed the presence of a second story because the route he took in and out of the community did not pass in front of Trustees' property. Id. at ¶ 17. It was for this reason that Nazemi similarly did not see the story poles when they were present. Id. Additionally, the elevation difference between Morning Star's property and Trustees' property prevented Nazemi from viewing any portion of Trustees' property from Morning Star's property. Id. It was only after Nazemi observed construction workers standing on the roof of the second story building that he became aware of a potential breach of the Covenant. Id. at 18.

Morning Star commenced the present action on July 20, 2022, seeking to enforce the Covenant and prevent Trustees from completing construction on the second story portion of their home. See Complaint. Since filing this action, Morning Star has alleged that Nazemi's privacy has been violated by Trustees' construction workers; namely, they have been shouting outside Morning Star's property, harassing Nazemi, his son, and his son's mother, and preventing Nazemi from the full use and enjoyment of the property. Application at 11. Additionally, Morning Star has accused Trustees of engaging in "willful and malicious efforts to conceal the true nature of their construction project from [Morning Star] by actively obstructing [Morning Star's] ability to learn more about the project. Id. Trustees disagree with this characterization, noting their continued compliance with the City's permitting and notice requirements.

II. LEGAL STANDARD

On an application for a preliminary injunction, the plaintiff has the burden to establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm if the preliminary relief is not granted, (3) the balance of equities favors the plaintiff, and (4) the injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 5, 20 (2008).

In the Ninth Circuit, the Winter factors may be evaluated on a sliding scale: "serious questions going to the merits, and a balance of hardships that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." Alliance for the Wild Rockies v. Cottrell, 632

F.3d 1127, 1134-35 (9th Cir. 2011).

III. DISCUSSION

A. Likelihood of Success on the Merits

Morning Star bears the burden of showing that it is likely to succeed on the merits. There is no dispute that a restrictive covenant exists, that it applies to Morning Star's and Trustees' properties, and that it is valid on its face. Nor is there a dispute that Morning Star has standing to sue to enforce the Covenant. What is in dispute is what the Covenant actually prohibits. Therefore, in order to show likelihood of success on the merits, Morning Star must demonstrate that, absent any defenses, its interpretation of the Covenant is more likely correct and would therefore control.

i. Interpretation of the Covenant

Morning Star argues that the Covenant's language is "clear and unambiguous" in prohibiting structures greater than one story. Application at 14. See Bank of the West v. Superior Ct., 2 Cal.4th 1254, 1264 ("If contractual language is clear ane explicit, it governs"). It asserts that the Covenant's use of the conjunction "or," separating the 18-foot height restriction from the one-story restriction, implies that both are independently prohibited. Id. at 15.

It is well-settled that the use of the word "or" indicates a disjunctive reading. See U.S. Commodity Futures Comm'n v. Monex Credit Co., 931 F.3d 966 (9th Cir. 2019). While a disjunctive reading is not always determinative, if the language is unambiguous and does not produce absurd results, the plain meaning controls. Id. In this context, the disjunctive "or" separates two clauses: one imposing a height restriction on Lot 16, and one imposing a story restriction. Covenant, Art. II, Sec. 3. This sentence structure implies two independent restrictions, prohibiting the owner of Lot 16 from building anything over 18 feet, or alternatively, anything greater than one story. If the Covenant was phrased in the affirmative, then the use of "or" in this context would favor Trustees' position, because they would be *permitted* to build either a structure not greater than 18 feet, or a structure not greater than one story. In that case, a two-story structure less than 18 feet tall would be permissible. However, because the Covenant is

phrased in the negative, both structures greater than 18 feet or, separately, more than one story tall are restricted.

This interpretation of the Covenant also makes sense in the context of its stated purpose: to preserve privacy. See id. at Recitals. Even if a 2-story building is less than 18 feet tall, and therefore wouldn't obstruct any view, it would permit a person to look into the adjacent lot because they would be standing higher than if a one-story building had 18-foot ceilings.

Trustees present substantial evidence of a different interpretation. See Cal. Civ. Code § 1636 ("A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful"); see also Upper Deck Co. v. Panini America, Inc., 533 F.Supp.3d 956, 966 (S.D. Cal. 2021) (noting that extrinsic evidence may be received "to determine whether the contract at issue is 'reasonably susceptible' to the interpretation urged by a party, even if the court concludes 'that the language of the contract appears to be clear and unambiguous on its face.'") (quoting Halicki Films LLC v. Sanderson Sales and Mktg., 547 F.3d 1213, 1223 (9th Cir. 2008). Trustees argue that the intent of the Covenant was to impose a height restriction only. Second Opp'n at 2-4. Trustees point to the heading of the section at issue, entitled "Height Restrictions on Improvements on Lot 16" to support their argument that the purpose of this provision is to regulate overall height, irrespective of how many stories there are. Second Opp'n. at 3-4. They contend that this view of the Covenant is supported by the types of homes typically constructed in Malibu as well as other restrictive covenants for lots in the community. Id. Trustees point to other covenants executed around the same time as the Covenant at issue here to show that the intention was to impose a height restriction, not a separate story restriction. See Declaration of Alan Block, Dkt. No. 27-1, at ¶¶ 7-12 ("Block Decl."). In particular, Trustees note that the term "one-story" in Malibu is synonymous with "18-foot high structure." Id. Trustees additionally include documentation of their correspondence with the City of Malibu explaining this interpretation. Schoen Decl., Dtk. No. 13-1, Ex. 2.

However, as analyzed above, the plain language of the Covenant indicates that it imposes two independent restrictions: overall height and number of stories. Because it is undisputed that a portion of Trustees' house is greater than one story, Morning Star's interpretation of the Covenant puts Trustees in breach. This

weighs in favor of finding that Morning Star will succeed on the merits in this respect.

i. Affirmative Defenses

In addition to showing that the Covenant prohibits structures greater than one story regardless of their height, Morning Star must show that no defenses to its equitable claim would be likely to succeed. In its first order denying Morning Star's request for a TRO, the Court noted that the doctrine of laches likely precluded Morning Star from obtaining its requested relief. See Order. Based on the additional evidence both parties have presented regarding the issue of delay, the Court finds that it is likely that Trustees would likely succeed in their laches defense.

"Laches is an equitable time limitation on a party's right to bring suit." Kling v. Hallmark Cards, Inc., 225 F.3d 1030, 1036 (9th Cir. 2000). Laches requires a showing of both "unreasonable delay by the plaintiff and prejudice" to the defendant. Id. Here, the evidence presented at this stage indicates that Trustees would likely be able to show both these elements.

Morning Star likely unreasonably delayed bringing the present action because it had ample notice of the construction and opportunity to learn of the Trustees' plans to have a second story above the garage. Trustees began the process of obtaining all required permits and permissions from the city in 2020. Schoen Decl., at ¶¶ 7-8. As part of that process, Trustees submitted their full construction plans which noted in several places that there would be a second story unit above the garage. See Friedland Decl., at ¶ 8; Ex. H; Nazemi Decl., Ex. C. These plans were available to the public at all times, referenced in the notices sent by the City to nearby homeowners, and referenced in the notice Trustees posted on their property. Schoen Decl., at ¶¶ 7-9; Ex. 2.

Morning Star asserts that it did not have actual notice of the second story until July 2022 when Nazemi observed the second story construction. See Third Reply at 6. Morning Star states that the only way it could have known about Trustees' intent to build a second story was to go "to the City of Malibu and analyz[e] the plans that were on file with the City." Id.; Nazemi Decl., ¶ 15. Prior to seeing the second story's construction, "there was no reason" for Morning Star

to seek out Trustees' plans for any purpose. See Third Reply at 6. The Court is unpersuaded. The supplemental declarations Morning Star submitted indicate that Morning Star was very much aware of and interested in the progression of Trustees' construction. For example, Morning Star submits emails documenting a conversation between Nazemi and Trustees discussing their respective property lines and moving a mailbox and sprinkler head to permit Trustees to construct a fence. See Supp. Nazemi Decl., Dkt. No. 30-5, Ex. H. These emails indicate that Nazemi went as far as to hire his own surveyor to ensure that the property line upon which Trustees relied was correct. See id. Given the degree to which Morning Star and Nazemi were aware of the details of Trustees' construction, the Court is unconvinced that Morning Star had "no reason" to seek out Trustees' plans. Morning Star was incontrovertibly on notice that Trustees were constructing a new home on the adjacent lot; they were in communication with Trustees regarding multiple aspects of the construction. They therefore had every reason to engage in a reasonable search to access Trustees full plans[3] which would have immediately revealed Trustees' intent to construct a second unit above their garage.

Additionally, Morning Star argues that it could not have had constructive notice of the second story because neither it nor Nazemi received either the Notice of Application or Notice of Decision that the City purportedly mailed to them. Nazemi Decl., at ¶ 10. Morning Star further asserts that, even if it had received these notices, they failed to properly inform it of Trustees' plans to construct a second story. Id. at ¶ 13. Morning Star is correct in its characterization of the Notices. The language of both Notices described the construction as "a new 18 foot tall, 5,461 square-foot single-family residence, including a 578 square-foot attached second unit." Friedland Decl., at ¶ 8; Exs. F, G. Notably missing from this description is that the 578 square-foot attached second unit is a second *story* unit. However, as Trustees note, Trustees did not play a role in the drafting or mailing of these Notices; they only provided the plans from which the City drafted the Notices. First Opp'n. at 9-10.

Morning Star also contends that the story poles Trustees placed could not have provided sufficient notice of a second story. In compliance with the City's

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[3] The Court also notes that these plans were readily available on the City of Malibu's website for anyone to access should they desire. See Third Opp'n. at 5.

regulations, Trustees erected story poles from July, 2020 through October, 2020, during which time Morning Star made no objections nor made any inquiries into the project. Schoen Decl., at ¶ 6. Morning Star argues that this is inconsequential to the current claim because the story poles themselves would not have provided notice of the presence of a second story. Nazemi Decl., at ¶ 16. Morning Star further notes that neither it nor Nazemi did not see the story poles because Lot 17 is located "closer to the entrance to the Sea Star Estates community" such that "when driving to and from" Lot 17, Lot 16 is not observable. Id., at ¶ 17. Whether Nazemi or any other representative of Morning Star actually saw the story poles is irrelevant. Their purpose is to provide at least constructive notice of the height and orientation of the future structure, so their presence served their purpose. However, Morning Star is correct in its assertion that the poles themselves would not have indicated Trustees' intentions of including a second story above the garage. If the story poles were the only notice provided to Morning Star, this argument would be more persuasive. Because there were several other means of providing Morning Star notice of the construction and its details, and the story poles were merely one of those.

As to the second prong, Trustees will likely be able to show prejudice due to Morning Star's delay in bringing the present action. Waiting until the second story was in the process of being built to object to it undoubtedly prejudices Trustees by delaying construction.

For these reasons, although Morning Star would likely prevail in its interpretation of the Covenant, because it delayed in bringing the present lawsuit, its likelihood of success on the merits is slight. However, a weaker showing of likelihood of success may be bolstered by a strong showing of the remaining elements in a claim for a preliminary injunction.

B. Likelihood of Irreparable Harm

Morning Star asserts that it is certain to suffer irreparable harm in the form of lost property rights if Trustees are not enjoined from constructing the second story portion of their home.[4] Morning Star argues that the "loss of real property

[4] Morning Star argues in its Third Reply it is not within the province of this Court to judge whether it will suffer irreparable harm, and the Court "must accept that [a] violation of the

rights generally results in irreparable harm because real property and its attributes are considered unique." Application at 11; Response at 17. Specifically, Morning Star alleges it will lose the rights to own, possess, use, and enjoy the property without any outside interference. Id. Additionally, Morning Star is concerned that the second story on Lot 16 will diminish the value of Lot 17, as well as infringe on the privacy interests the Covenant sought to protect. Finally, Morning Star argues that not issuing a preliminary injunction will "suggest[] that [others in the community] too can willfully and openly defy restrictive covenants recorded against their properties without consequence. The Court will address each injury in turn.

First: loss of property rights in general due to a violation of the Covenant. As an initial matter, Morning Star is correct that there is no need to show substantial harm with regard to lost property rights. See Aspen Grove Condominium Ass'n. v. CNL Income Northstore LLC, 231 Cal. App. 4th 53, 63 (2014). However, the strength of this argument is diminished by Morning Star's delay in bringing this action until after construction had already commenced.

Second: Diminished value of Morning Star's property. In its first three briefings on this issue, Morning Star did not provide any evidence of how its property value would diminish nor by how much. In its most recent filing, Morning Star included the declarations from two California real estate brokers alleging that the loss of privacy could result in a diminution in value of up to $1,000,000. See Declaration of Golnaz Ressekh ("Ressekh Decl."), Declaration of Farshad Harandi ("Harandi Decl."). While the Court finds this diminution in value to be compelling, the Court holds that these declarations are insufficient to show irreparable harm that would warrant an injunction. Morning Star has not alleged specific diminution in value until this point in the litigation, indicating that it has not been particularly concerned about such decrease in value until recently. Additionally, the real estate brokers state that the loss in value "cannot be readily quantified." See Ressekh Decl. at 2. Therefore, Morning Star has not shown irreparable harm on this injury.

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restrictive covenant is, per se, irreparable harm." Third Reply at 18. Morning Star is incorrect. Although it is true that violation of a property right constitutes a per se harm, it is left to the Court to decide whether an injunction should issue notwithstanding that harm.

Third: Inviting others to openly and willfully defy restrictive covenants. The Court finds this injury to be speculative. As with diminished value, Morning Star has not provided any evidence of that this future harm may come to exist. Additionally, as discussed above, it is unlikely that Trustees "wilfully and openly" violated the Covenant. The evidence supports a finding that they intended, and made substantial good faith efforts, to comply with the Covenant.

Fourth: Loss of privacy rights expressed in the Covenant. The Court finds this harm compelling, particularly when considered in the light of the Covenant's intended purpose: protecting the property owners' respective privacy rights. See Covenant. Morning Star alleges that the construction activities themselves violate its privacy interests. Construction workers "currently peer into [Nazemi's] backyard from the second story" and "yell and do cat calls at female guests." Nazemi Decl., ¶ 26. The construction noise has disturbed Nazemi and his young son, waking them up before 7 a.m. most days. Id. However, the invasions of privacy and peace caused by the construction and construction workers are not the types of privacy interests the Covenant contemplated, nor those that would cause irreparable harm. While construction workers harassing Nazemi and his guests is unacceptable, an injunction would not solve that issue, nor is it intended to. The loss of privacy that would cause irreparable harm is a type that, on these facts, is not present. Nazemi states that his view is not blocked by the second story, nor can he even see the majority of Trustees' home from Morning Star's property. Nazemi Decl., at ¶¶ 17-18. Indeed, Nazemi testifies that he can only see people on Trustees' property when the construction workers stand on the roof of the second story, an occurrence which would almost certainly not be repeated outside of the construction context. Id. Additionally, Nazemi planted trees on the property line which obscure any potential line of sight from the second story window into Morning Star's property. Schoen Decl., at ¶ 27, Ex. 12.

Taken together, the Court does not find that Morning Star would suffer irreparable harm should an injunction not issue.

C. Balance of Hardships

The third prong in the preliminary injunction analysis requires the Court to balance the hardships to both parties and consider the equities of the matter. Morning Star argues that it will suffer "substantial prejudice" by continued

construction through a "loss of use, and enjoyment of the Property, infringement upon its privacy rights, and the diminishing of [Morning Star's] property value[,] thereby destroy[ing] the apartment business that it conducts there." Application at 12; Response at 18. However, with the exception of privacy interests, Morning Star does not provide evidence of how continued construction would impair any of these rights.

Trustees assert that they will suffer monetary losses in the form of waterproofing the structure while this case is being litigated, costing them between $38,000 and $62,000 per month. Declaration of Keith Canter, Dkt. No. 27-2, at ¶¶ 5-6; Declaration of Craig Key, Dkt. No. 22-1, at Ex. A.

Morning Star asks the Court to consider Trustees' wrongdoing in balancing the equities.[5] Response at 19. Based on the evidence before it, the Court finds that Trustees likely did not knowingly withheld information from the City or Morning Star, nor engaged in misconduct that would rise to the level of "willful and malicious efforts to conceal the true nature of their construction project" from Morning Star. Application at 19. Trustees were aware of and made a good faith effort to comply with the Covenant. In June, 2020, Trustees' attorney sent a letter to the City's Planning Director with his interpretation that, as long as the overall height of the structure remained at or below 18 feet, it would not run afoul of the Covenant. Shoen Decl., at ¶ 10. While this interpretation is not necessarily correct, it indicates that Trustees did not willfully or maliciously violate the Covenant.

Morning Star also alleges that Trustees "threatened the community's homeowner's association with litigation if they did not exclude [Morning Star's] authorized representative [Nazemi] from attending HOA meetings concerning [Trustees'] project. Response at 19. In support of this contention, Morning Star includes a screenshot of a text message from Claire Carafello, the Sea Star HOA manager, to Hovsep Koseueyan, the Sea Star HOA President on November 19, 2021. Nazemi Decl., at Ex. D. In the text, Carafello says that she would not let

[5] Morning Star specifically asks the Court to apply the doctrine of unclean hands. The Court notes that the doctrine of unclean hands, like laches, is an affirmative defense available only to the party defending a claim in equity. Because Morning Star is the plaintiff in this case, it cannot raise this doctrine.

Nazemi into the Zoom HOA meeting because "He is not an owner" and that "Karen will sue us." Id. Although no last name is included here, Morning Star reasonably presumes Carafello is referring to Karen Schoen. Although Trustees admit they requested that Nazemi, as a non-property owner, be excluded from the meeting, they deny that they threatened to sue the community's homeowner's association. Schoen Decl., ¶ 20. In support of this characterization, Trustees submit an email from Schoen to Claire Cabrey, an HOA manager, sent on November 16, three days prior to the November 19 meeting. Id. at Ex. 10. In the email, Schoen asks Cabrey to uninvite and not send a Zoom link to non-members, specifically calling out Nazemi as "solely an occupant/tenant" who "made ... trouble" for Trustees. Id. Taken together, it does not appear that Trustees threatened the HOA with litigation should they permit Morning Star from attending the meeting. In fact, Schoen only requests that Nazemi, not Andrew McNeil (the then-owner), be excluded. Finally, the Trustees' house was not discussed at the meeting, so Morning Star did not miss any information to which they did not already have access. Id. at Ex. 8.

For these reasons, the Court finds that the balance of hardships and equities does not weigh in favor of granting an injunction at this stage in the litigation.

D. Public Interest

The final prong of the analysis requires analyzing whether the public has an interest in issuing a preliminary injunction. Morning Star argues that the public has an interest in "safeguarding real property rights." Application at 20. While this is certainly true, it does not outweigh the Court's findings in the first three prongs, particularly when considered alongside the likelihood that Trustees did not intentionally violate the Covenant and Morning Star delayed in bringing this action.

IV. CONCLUSION

For the forgoing reasons, the Court **DENIES** the motion.

IT IS SO ORDERED.