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

TENTATIVE Order Regarding Motion to Modify Preliminary Injunction

Defendants Keith Canter and Karen Schoen, Trustees of the Canter Schoen Family Trust ("Trustees"), filed a motion to modify or dissolve the preliminary injunction the Court previously ordered. (Mtn., Dkt. No. 52.) Plaintiff Morning Star, LLC ("Morning Star") opposed the motion (Opp'n., Dkt. No. 57) and Trustees responded (Reply, Dkt. No. 64).

For the following reasons, the Court **GRANTS** Trustees' motion to dissolve the preliminary injunction, providing they take steps to remove the window in the second-story unit facing toward Morning Star's property.

I. BACKGROUND

This case is about a dispute regarding enforcement of a Restrictive Covenant. On September 27, 2022, this Court granted Morning Star's request for a preliminary injunction, finding a likelihood of success on the merits and irreparable harm in the form of lost privacy rights. (Dkt. No. 40.) The injunction ordered Trustees to "cease improvements on the second story unit above the garage, including but not limited to installing windows, until the final disposition in this case." (Id. 14.) The injunction did not restrict Trustees from continuing construction on other portions of their home. (Id.)

Following the Court's order, Trustees chose to redesign the plans for their residence, eliminating the only window facing Morning Star's property on the second story unit. (Schoen Decl. ¶ 10, Ex. 4.) Trustees submitted the revised plans to the City of Malibu on October 17, 2022 and subsequently received approval from the City. (Id.) Trustees now move for a modification of the preliminary injunction to permit them to remove the second-story window facing Morning Star's property and, following the window's removal, dissolution of the injunction in its entirety. (Mtn. 4.)

II. LEGAL STANDARD

A court may relieve a party of its obligations from an order when "applying it prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). "A district court has inherent authority to modify a preliminary injunction in consideration of new facts." A&M Records, Inc. v. Napster, Inc., 284 F.3d 1091, 1098 (9th Cir. 2002); see Sys. Fed'n No. 91 v. Wright, 364 U.S. 642, 647–48 (1961) (holding that a district court has "wide discretion" to modify an injunction based on changed circumstances or new facts). "Because injunctive relief is drafted in light of what the court believes will be the future course of events . . . a court must never ignore significant changes in the law or circumstances underlying an injunction lest the decree be turned into an instrument of wrong." Salazar v. Buono, 559 U.S. 700, 714-15 (2010) (plurality opinion) (citation and internal quotation marks omitted). A significant change is one that "pertains to the underlying reasons for the injunction." Earth Island Inst. v. Bird, 2011 WL 4479802, at *2 (E.D. Cal. Sep. 26, 2011). The party seeking to modify a preliminary injunction "bears the burden of establishing that a significant change in facts or law warrants revision or dissolution of the injunction." Karnoski v. Trump, 926 F.3d 1180, 1198 (9th Cir. 2019).

III. DISCUSSION

Trustees argue that two significant changes merit a modification, and ultimately dissolution, of the preliminary injunction: (1) Trustees' plan to remove the second story unit's window facing Morning Star's property; and (2) "consideration of Morning Star's breach of the restrictive covenant as a justification for the Trustees' alleged noncompliance or, alternatively, a bar to Morning Star's enforcement of the restrictive covenant against the Trustees." (Mtn. 6.) The Court need only consider the first ground.

Trustees argue that Morning Star's claim of irreparable harm per se in the form of lost property rights "constitutes only a rebuttable presumption which the Trustees can and have rebutted." (Mtn. 9.) However, Trustees cite no legal authority for this proposition, nor does it comply with the idea of per se harm. As the Court noted in its previous order, lost property rights on their own do constitute harm in and of itself. However, it is for the Court to weigh this harm against other factors in choosing to grant or deny a preliminary injunction. The

Court did so in its initial order and will do so again based on changed circumstances.

Trustees assert that the preliminary injunction is no longer needed because Trustees intend to remove the only window on the second-story unit that faces Morning Star's property. (Schoen Decl. ¶ 10, Ex. 4.) Therefore, according to Trustees, the harm the Court previously found sufficient to warrant a preliminary injunction is no longer necessary. The Court agrees. As the Court previously noted, the "loss of privacy comes from Trustees' ability to 'look down into' the adjoining yard, 'approximately 40 feet lower than [Trustees'] second story building.'" (Order, Dkt. No. 40 at 11-12 (quoting Nazemi Supp. Decl., Dkt. No. 30 ¶ 58).) It was this loss of privacy rights that the Court previously found to constitute irreparable harm, "particularly when considered in the light of the Covenant's intended purpose: protecting the property owners' respective privacy rights." (Id.) Because removing the window will no longer permit Trustees to look down into Morning Star's yard from the second-story unit, the basis for the preliminary injunction no longer exists.[1] See Napster, 284 F.3d at 1098 (finding a sufficient change in circumstances when Napster implemented a new filtering mechanism that ended the violative conduct which was the basis of the preliminary injunction).

Morning Star argues that the window's removal is irrelevant, as the presence of a second story in any way is a breach of the covenant. (Opp'n. 12.) Morning Star steadfastly clings to the proposition that restrictive covenants "will be strictly enforced . . . without any showing of actual damage or substantial injury." (Id. (quoting Walker v. Haslett, 44 Cal. App. 4th 394, 398 (1919).) However, as previously noted, the presence of harm is not the end of the inquiry in granting a preliminary injunction – it is merely one of several factors. Furthermore, more recent California case law directs courts to construe restrictive covenants "in a way that is both reasonable and carries out [its] intended purpose." Eisen v. Tavangarian, 36 Cal. App. 5th 626, 635-36 (2019). Here, the covenant's

[1] In its opposition, Morning Star argues for the first time that another portion of Trustees' house is in violation of the Covenant. (Opp'n. 14-15.) Because the second allegedly violative portion of Trustees' home existed at the time Morning Star first moved this Court for a preliminary injunction, and because Morning Star did not raise this in its initial request, the Court finds this that this does not constitute a significant change, and Morning Star has waived this argument as to this motion.

intended purpose is to maintain the properties' respective privacy. Accordingly, a significant change in circumstances that removes the invasion of privacy that was the basis of the Court's reasoning in issuing the preliminary injunction obviates the need for the injunction.

With the pending removal of the second-story window facing Morning Star's property, the Court finds that the balance of hardships tips heavily in favor of dissolving the injunction. See Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (evaluating the Winter factors on a sliding scale). Morning Star's privacy will not be irreparably harmed, while Trustees would face the cost of winterizing the second-story unit and halting construction.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Trustees' motion to dissolve the preliminary injunction, providing they promptly take steps to remove the window in the second-story unit facing toward Morning Star's property. They shall file a report with the Court within in ten day of this Order stating the status of removal, which includes picture(s), and shall file a similar report every ten days thereafter until the window is removed.[2]

IT IS SO ORDERED.

The Court **VACATES** the November 21, 2022 hearing. Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. on Tuesday, November 22, 2022 stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted.

[2] Permanent improvements such that the plaintiff's property is no longer visible from the interior of the second-story of Trustees' property shall be deemed removal.