

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-001827

05/31/2013

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

CRAIG KITTINGER, et al.

IAN D QUINN

v.

CORONADO RANCH COMMUNITY
ASSOCIATION

NIKITA VERMA PATEL

HEARING

Courtroom: ECB-512

Prior to the commencement of the hearing, Plaintiffs' exhibits 1-9 are marked for identification.

10:00 a.m. This is the time set for evidentiary hearing regarding Plaintiff's Application for Preliminary Injunction. Plaintiffs Craig Kittinger and Katherine Kittinger are present and are represented by Counsel Ian D. Quinn. Defendant Coronado Ranch Community Association is represented by Counsel Nikita V. Patel. Also present is Robert Hicks, the board president for the Defendant Association.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

By stipulation, Plaintiffs' exhibits 1-7 and 9 are received in evidence.

Craig Kittinger is sworn and testifies.

Plaintiffs' exhibit 8 is received in evidence.

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10:52 a.m. Court stands at recess.

11:04 a.m. Court reconvenes with respective counsel and the parties present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Robert Hicks is sworn and testifies.

Procedural issues are addressed.

Closing arguments are presented.

IT IS ORDERED taking this matter under advisement.

11:51 a.m. Matter concludes.

Later:

To obtain a preliminary injunction, Plaintiffs must show:

1. A strong likelihood of success at trial on the merits;
2. The possibility of irreparable injury not remediable by damages if a preliminary injunction is not granted;
3. The balance of hardships favors a preliminary injunction; and
4. Public policy favors an injunction.

IB Property Holdings, LLC v. Rancho Del Mar Apartments Ltd. Partnership, 228 Ariz. 61, 64-65, 263 P.3d 69, 72-73 (App. 2011). On these factors, the court finds as follows.

First, there is some likelihood of success on the merits. Although the parties agree that the question of whether Defendant has an easement over Plaintiffs' property is a legal question, a definitive resolution of that issue will require full briefing and possibly further factual development.

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For preliminary injunction purposes, the court finds that Plaintiffs have a strong case on the merits. If, as appears to be the case, Plaintiffs neither knew nor had any reason to know of the pipe on their property, it is hard to see how they can be bound by an easement. Even if the CC&R's provide for an easement of this kind, an easement for this specific pipe is not recorded. It is not clear how Defendant can have an unrecorded, unknown and unknowable easement.

Second, Plaintiffs have demonstrated a possibility of irreparable injury; there is at least some chance that the pipe could rupture on its own while this action is pending. But this is a remote possibility. Defendant's water pipe that runs beneath Plaintiffs' property is not likely to burst or be damaged now that Plaintiffs know where it is.

Third, the balance of hardships militates against a preliminary injunction. The water pipe at issue carries irrigation water for the landscaping of common areas in this development. Without that water, Defendant would suffer a great hardship by being forced to either allow the landscaping to go without water, or finding some expensive alternative such as trucking in water or re-routing the pipe. Against that hardship is the slight chance that the pipe might burst on its own and cause further damage to Plaintiffs' property.

Fourth, for the same reason that the balance of hardships favors Defendant, public policy does not favor a preliminary injunction. Moreover, denying a preliminary injunction would preserve the status quo until this matter can be resolved on the merits.

Plaintiffs may or may not ultimately prevail on the merits of this dispute. But, balancing the hardships, the court finds that a preliminary injunction is not warranted.

IT IS ORDERED denying the Application for Preliminary Injunction.

IT IS FURTHER ORDERED that the parties shall submit a joint pretrial memorandum and proposed scheduling order as set forth below.

The court will review the joint pretrial memorandum and may adopt or modify the proposed scheduling order, set a scheduling conference to resolve disputed scheduling issues, or resolve the disagreements without argument. If the parties believe a conference would be beneficial irrespective of whether there are disagreements, they should say so in the joint pretrial memorandum.

If the parties fail to file a timely memorandum, sanctions may issue pursuant to Rule 16(f).

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IT IS FURTHER ORDERED that counsel are directed to meet personally to discuss all matters set forth in Rule 16(b). Counsel shall file with the court by **5:00 p.m. on July 1, 2013**, a joint pretrial memorandum, and shall lodge a proposed scheduling order that includes dates for the following items and conforms substantially with the attached sample order.

1. **A date or dates for initial disclosures** and/or to supplement disclosures made to date.
2. **An initial and final date to propound written discovery requests** that shall include, as far as can reasonably be anticipated, any and all medical examinations which may be required of any of the parties; the person or persons to conduct such examinations; and all tangible evidence to be disclosed or exchanged.
3. **A date for the initial and final disclosure of all non-expert witnesses**, and/or to supplement disclosures made to date.
4. **A date for the initial and final disclosure of the identities, subject matter, and reports of expert witnesses**, and/or to supplement disclosures made to date.
5. **A date for completion of all depositions.**
6. **A date by which any motions to amend the pleadings must be filed.**
7. **A date by which any discovery motions must be filed.**
8. **A date by which any dispositive or partially dispositive motions must be filed.**
9. **A proposed date for a mandatory settlement conference pursuant to Rule 16.1. Alternatively, the parties may propose a deadline by which they will participate in private mediation.**
10. **The anticipated length of trial.**
11. **Any other deadline or topics the parties wish to include.**

If the parties agree as to the dates, they need only lodge the proposed scheduling order and file a notice of lodging evidencing the parties' stipulation to it. If counsel are unable to agree on some or all of the items set forth in the attached form of order, they shall submit their agreements in the form of the attached form of order and, as to any disagreements, state their

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separate proposals and reasons for any disagreements. All proposed deadlines shall be set forth as calendar dates, not in the form "XX days before trial."

The court prefers that lodged orders be in a word processing format that will permit it to make modifications.

The parties are encouraged to view Judge Warner's online profile of the Superior Court's website for additional information on appearing before Judge Warner.

FILED: Exhibit Worksheet

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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[Proposed] Scheduling Order

The court having received the parties' joint pretrial memorandum, and good cause appearing,

IT IS ORDERED that the following deadlines shall govern this matter unless modified by the court:

- (1) Initial disclosures shall be exchanged by: **(MM/DD/YYYY)**
- (2) Written discovery shall be propounded by: **(MM/DD/YYYY)**
- (3) Written discovery shall be completed by: **(MM/DD/YYYY)**
- (4) Final non-expert disclosures shall be made by: **(MM/DD/YYYY)**
- (5) The identities and subject areas of expert testimony shall be disclosed by: **(MM/DD/YYYY)**
- (6) Plaintiff's final expert disclosures shall be made by: **(MM/DD/YYYY)**
Defendant's final expert disclosures shall be made by: **(MM/DD/YYYY)**
Rebuttal expert disclosures shall be made by: **(MM/DD/YYYY)**
- (7) Depositions shall be completed by: **(MM/DD/YYYY)**
- (8) Any discovery motions shall be filed by: **(MM/DD/YYYY)**
- (9) Any motions to amend pleadings shall be filed by: **(MM/DD/YYYY)**
- (10) Any dispositive motions shall be filed by: **(MM/DD/YYYY)**
- (11) The parties remaining in this action shall participate in private mediation by **(MM/DD/YYYY)**.

OR

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The parties remaining in this action shall participate in a Mandatory Settlement Conference (ADR) by (MM/DD/YYYY)

(Note: only one of the preceding two options shall be included in the proposed order.)

- (12) The following number of days will be required to pick a jury and try this matter:

- (13) The provisions of subsections (a) through (g) of Rule 38.1, ARCP, shall not apply to this proceeding.

IT IS FURTHER ORDERED that the court will set one or more status conferences by minute entry.

DATED: _____

Randall H. Warner
JUDGE OF THE SUPERIOR COURT