

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
SIMI VALLEY**

MINUTE ORDER

Date: 02/05/2010

Time: 02:46:00 PM

Dept: S5

Judicial Officer Presiding: Barbara A. Lane

Clerk: Sandy McCarty

Reporter/ERM:

Bailiff/Court Attendant:

Case No: **56-2010-00366413-CL-MC-SIM**Case Title: **Mead vs. Bridle Path**

Case Category: Civil - Limited

Case Type: Misc Complaints - Other

EVENT ID/DOCUMENT ID: 1334290

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Application for Temporary Restraining Order & Order to Show Cause under submission, now rules as follows:

By their *ex parte* application for a temporary restraining order ("TRO") and order to show cause, the plaintiffs sought injunctive relief at the court hearing on 2/1/10. The plaintiffs' counsel, who filed the complaint and argued for the TRO, is Cynthia M. Pandolfi, Esq. The TRO was opposed at the hearing by Stephen M. Levine, Esq., who appeared as counsel for the defendant Bridle Path Homeowners Association, Inc.

The plaintiffs' complaint for declaratory relief under CCP §1060 and §1363.09 was filed on 1/26/10. The plaintiffs are long-time resident Esther Mead and 4 other "class A" members of the Bridle Path Homeowners Association ("HOA"), meaning that they own their lots in this planned development community. Three of the plaintiffs, Linda Pierce, William Apodaca and David Miller, are candidates seeking to be elected to the board of directors of the HOA. The other plaintiff is James Pantaleo.

The election of the board of directors of the Bridle Path Homeowners Association was noticed and scheduled to be held on 1/18/10. The election was, the plaintiffs contend, "illegally" cancelled on that date.

The plaintiffs request the Court to grant injunctive relief, ordering that the Bridle Path Homeowners Association board of directors' election be held within 15 days; that the Court disapprove of the re-scheduled election date of 3/15/10 set by the HOA's present board of directors; and that the Court make specific rulings regarding the use of previously obtained voting proxies.

The defendant HOA maintains that an injunction must be denied because, in cancelling and rescheduling the annual meeting and election, the board of directors acted under the "business

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judgment rule" and advice of counsel. The HOA further contends that the requirements for obtaining a court's intervention through an injunction have not been met.

Having considered all of the papers, the Court denies the plaintiffs' application for injunctive relief.

Standards for Granting a Temporary Restraining Order

A TRO may be obtained *ex parte* where it is needed to preserve the status quo, or to prevent irreparable harm pending a hearing on an application for a preliminary injunction. (*Civil Procedure Before Trial* (The Rutter Group 2009) by Weil, Brown and Rylaarsdam, Chapter 9, "Provisional Remedies" section 9:555.)

Similar standards apply to a TRO as apply to an application for a Preliminary Injunction ("PI"). A court may grant injunctive relief to preserve the "status quo" pending a trial (in this case, the declaratory relief action), if a two-pronged test is met: 1) the court determines that the plaintiffs will suffer greater harm from denial of the injunction than the opponents will sustain if it is granted; and 2) the court determines that the plaintiffs have shown "a reasonable probability" of prevailing on the merits at the trial of the action. (See *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633; and *Robbins v. Superior Court* (County of Sacramento) (1985) 38 Cal.3d 199, 206.)

Since the grant of injunctive relief is an extraordinary, equitable remedy, courts require an application for an injunction to be supported by admissible evidence.

The Court makes findings of fact and law as follows:

The Plaintiffs Do Not Make The "Greater Harm" Showing Required for a TRO

There are reportedly 630 homes in the Bridle Path Community. The plaintiffs claim that they will suffer great harm from the annoyance, stress and time expenditure that will be involved in having to re-canvas the development to obtain new voting proxies. They allege that it is unfair that they should have to obtain new proxies for the re-scheduled 3/15/10 election, since they believe they correctly secured proxies from their supporters for the cancelled January election. The plaintiffs have not, however, made an evidentiary showing sufficient to establish the "greater harm" prong of the test for injunctive relief.

While the plaintiffs assert that the cancellation of the election was due to the political motives of the incumbent directors who were running for re-election, but were fearful of defeat, the plaintiffs' suspicions are not evidence.

The board of directors notice regarding the postponement of the election to 3/15/10 shows that new ballots and proxies will be required of everyone. As a consequence, the burden of re-cavassing the Bridle Path Community to secure signatures to proxy ballots will be the same for all the candidates and for all the homeowners interested in campaigning for them. The plaintiffs do not establish that they are placed at any unfair disadvantage in securing the proxies of the voters who previously supported them, or of new supporters.

Mr. Miller, a plaintiff and candidate for a board of directors' seat, complains that he has planned "major surgery on 1/25/10," anticipates a 7-day hospitalization thereafter, and believes that his surgery will result in his "not [being] able to physically walk the neighborhood and re-collect (his) proxies" for the re-scheduled election in March 2010 (Miller declaration ¶4). However, there is no showing that anyone on the incumbent board of directors knew of Mr. Miller's planned hospitalization; or that that was a reason the election scheduled for 1/18/10 was cancelled.

The plaintiffs complain that the cancellation of the 1/18/10 election gives the incumbent directors more time to campaign. The delay also gives the plaintiffs more time to campaign.

The plaintiffs do bring to the Court's attention a sign and a letter that they allege show the "political

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machinations" of the incumbent directors. The plaintiffs submit a photograph of a sign in front of an unnamed homeowner's residence and assert that it defames plaintiff and candidate Mr. Apodaca. It contains language stating that he has a conflict of interest because he has a separate lawsuit pending against the Bridle Path HOA, so will be claiming recoupment of his attorneys fees from the same Association for which he seeks to serve as a director. (Exh. 6, p. 1). The plaintiffs also submit a letter from the Manager of the Bridle Path HOA, Greg Moses, which recounts a dispute with plaintiff Mr. Miller and states his opinion that Mr. Apodaca and Mr. Miller are unfit to serve on the board of directors (Exh. 6, p. 2).

The plaintiffs contend that the existing board of director candidates are behind the provocative sign and letter. There is no evidence before the Court, however, that corroborates the plaintiffs' belief in that regard. The plaintiffs' evidence does not establish any direct link between the posted sign, or Mr. Moses' 1/22/10 letter, and the event the plaintiffs maintain warrants injunctive relief; namely, the cancellation and postponement of the board of directors' election (on 1/18/10).

If the plaintiffs deem it material to their election effort, the plaintiffs now have the time to communicate their criticism of the present directors to the voters, in their campaign literature, or directly; and to publicize their belief that the 1/18/10 election was "illegally," improperly or wastefully cancelled by the incumbent directors.

The plaintiffs argue that there is a waste of money in producing new election materials and that there could be confusion with the issuance of another ballot and proxy for the re-scheduled election. While there will be additional printing costs, and there is a potential for confusion, those are issues borne by the Association as a whole, and not by the individual plaintiffs who seek injunctive relief. It is noted that these plaintiffs have brought this lawsuit on their own behalf, not on behalf of the Homeowners' Association.

The sample proxy that is submitted (Exh. 5) does not look to be either complicated or expensive to reproduce. Therefore, the fact that such costs may be incurred is not a sufficient grounds for a court to grant the extraordinary relief of an injunction.

The Plaintiffs TRO Papers Do Not Establish A Likelihood of Prevailing

The annual meeting and election of the board of directors of the Bridle Path Homeowner's Association was noticed and scheduled for 1/18/10, but was cancelled. The plaintiffs contend that the board of directors "secretly" decided to continue the election, to deprive candidates who oppose the present board of directors of an election victory. Since the votes were never counted, that is an unverifiable, speculative claim.

In opposition to the plaintiff's application for a TRO, counsel for the HOA submitted the declaration of Stephanie Bennett, President of the current board of directors, who states that the board determined "it was in the best interests of the community to cancel and reschedule the [1/18/10] election," due to the concern of [unnamed] homeowners regarding the validity of proxies. Ms. Bennett further states that the election was rescheduled for 3/15/10 and "[n]otice of the election with ballots was placed in the mail [to all homeowners] on Tuesday 1/26/10..." (Bennett declaration ¶5.)

The plaintiffs ask the Court to direct the Association to schedule an election within 15 days.

The plaintiffs further argue that the "waste and confusion and unfairness" of the cancelled election should be "prevented by using the original voting materials, i.e., ballots and proxies that were prepared for the January 18th [election] meeting" (TRO brief p. 13/lns. 19-20). The plaintiffs also want the proxies they obtained for the 1/18/10 election "frozen" and declared valid for the next election.

The plaintiffs have not cited any legal authority, however, that would authorize this Court to give them special permission to vote in March the proxies that they already obtained (in advance of the 1/18/10

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election) for their candidates for the board of directors. No authority has been cited to the Court that it can or should instruct the Association that only previously obtained proxies can be used by the voters in the re-scheduled March election.

Since the Bridle Path Homeowner's Association's own governing documents grant the authority and prerogative to the Association's "Inspector of Elections" to make any determinations as to the use of proxies, the existence of a quorum, etc., the Court finds no reason why it should intervene, or make any directive as to how the election should be conducted.

Specifically, the Bridle Path Homeowners' Association's "Election Rules" (Exh. 3) at Article IV(b)(2) state that the "Inspector of Elections" is authorized to determine the validity of the proxies (Exh 3). In addition, the governing documents for the Association contain rules about voting rights and the necessity of a quorum, in the Election Rules (Article VI) and in the Bylaws (Article II, section 3). Statutory law, including Civil Code §§1363.03(b) and 1363.03(c)(H), also authorizes an Inspector of Elections to perform any acts that may be proper to conduct the election with fairness to all members of the Association.

Neither side has provided the Court with any direct evidence from Ted Martens, the Bridle Path HOA's "Inspector of Elections," as to the reasons why the 1/18/10 election was cancelled. Instead, what is submitted by the plaintiffs seeking the TRO and the HOA in opposition is hearsay as to what Mr. Martens determined regarding the disputes as to proxies, the existence or nonexistence of a quorum, etc.

Although the plaintiffs blame the incumbent directors for improperly cancelling the election, the limited information the Court was given does not necessarily support that conclusion. The reasons given by the Association's General Manager Mr. Moses' 1/23/10 email to homeowner Diane L. Zorick (Exh. 2) are consistent with, and permitted by, the "Election Rules," Bylaws and the Civil Code. Mr. Moses' 1/23/10 email states (hearsay) that the board acted as it did because "there weren't enough ballots to form a quorum." Mr. Moses' email further states that the board had reason to question whether "most of the proxies collect [sic] were not properly written and therefore invalid." (Ibid.)

Mr. Moses' 1/19/10 (hearsay) letter to plaintiff and homeowner James Pantaleo offers a well-recognized legal justification for the board of directors' cancelling the election: that the Association acted on advice of counsel. Mr. Moses' wrote: "the Association's attorney advised the Board on this issue and stated the Board had a right to cancel and reschedule a meeting" and, according to the [unnamed] attorney, "the Board has 60 days (again, on the advice of their attorney) to hold the Annual Meeting." (Exh 2 to the TRO p. 3).

The Date of the Re-Scheduled Election-Of-Directors Vote Appears To Be Lawful

The plaintiffs' TRO papers do not show that the re-scheduled 3/15/10 election date is unlawful. The Association is required by its by-laws to hold an annual meeting, in accordance with Corp. Code §7510(b). The Corporations Code requires that the annual meeting be held within 60 days, if it is continued. The originally scheduled date was 1/18/10. The re-scheduled date set by the Bridle Path HOA board of directors is 3/15/10, which is 56 days from the date of the January meeting. Thus, even if there is some uncertainty as to the basis for the postponement of the election, it is set to be held within 60 days, the lawful amount of time under the Corporations Code.

The plaintiffs have not demonstrated that any statute or case authority was violated by the Associations' or its agents' deciding to postpone the election within that Corp. Code §7510 statutory time frame.

The Court concludes that the plaintiffs have not established any reason that the Court should not permit the election to go forward on the re-scheduled March 2010 date. The plaintiffs' fear that the incumbent directors may cancel the election again is speculative. What may happen in the future cannot be addressed by the Court beforehand.

A Mandatory Injunction Is A Drastic Remedy That Is Not Appropriate Here

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The Bride Path board of directors has rescheduled the election of directors to be held on 3/15/10. The plaintiffs' Application for a TRO maintains that the Court should, instead, order an election within "15 days" and "freeze the ballots and proxies" to those ballots received by mail and those proxies dated as of 1/18/2010, so that "the incumbent directors gain no political advantage through their [election] delay tactic" (TRO brief p. 13/ Ins. 22-24).

To the extent that the plaintiffs seek injunctive relief in the form of pre-trial court orders as to how proxies will be counted, restrictions as to solicitations or campaigning, reigning in "the ugly meanness of the campaigning" (TRO brief p.7/ln. 17) and policing allegedly false signage that a homeowner has erected in front of his/her house to influence members to vote against a candidate (Apodaca's declaration ¶13), the plaintiffs are effectively requesting this Court to issue a mandatory injunction, directing that actions be done.

Mandatory injunctive relief is very rarely -- indeed almost never -- granted by California courts; and the plaintiffs here cite no legal authority for the issuance of such orders. California courts have rejected, for example, injunctions that direct acts that are not subject to *objective* verification. (See e.g. *Readylink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, where an injunction prohibiting a former employee from soliciting anyone "associated with" or "in a business relationship with" his former employer was overturned on appeal.)

Finally, it is noted that even if a mandatory you-must-do-this-or-that injunction were to be granted by the Superior Court, it would not accomplish the quickly re-scheduled election (within 15 days of 2/1/10) that the plaintiffs want. One reason that mandatory injunctions are rarely issued at the preliminary injunction (far less the TRO) stage is that enforcement of a mandatory injunction is automatically stayed by the simple filing of a notice of appeal. The filing of a notice of appeal renders a mandatory injunction incapable of enforcement (See CCP §916, *Agricultural Labor Rel. Board v. Superior Court* (1983) 149 Cal.App.3d 709, 713; *Kettenhofen v. Superior Court* (1961) 55 Cal.2d 189, 191; and *The Rutter Group, Civil Procedure Before Trial*, "Provisional Remedies," sec. 9:543 and 9:549).

Mediation of This Election Dispute Would be a Potentially Viable Alternative

Given the high emotions, suspicions and differing assessments of why and under what circumstances the 1/18/10 board of directors' election was cancelled, the Court will need to hear from percipient witnesses such as the Inspector of Elections himself, if this "declaratory relief" lawsuit proceeds further.

The Court should not be understood as suggesting that numerous witnesses' statements under oath (depositions) should be taken. To the contrary, the Court has seen the high attorneys fees and costs that often result from "wars" between homeowners' association members. In litigation, each declaration or affidavit filed by one side is likely to be taken as an affront to which someone on the other side feels duty-bound to respond. This frequently leads to quick escalation of the lawsuit, more depositions or discovery being done; and significant expenses incurred by both the objecting homeowners and the HOA, in girding up for trial.

A homeowner's association and Bridle Path as an "inc." (corporation) is not permitted, by law, to appear in court through its elected board members, or its management company (except in small claims court cases). Consequently, when an HOA is sued in the Superior Court, it must hire attorneys to represent it in court. Thus, when an Association is sued, attorneys fees and costs are expenses of the Association, to be paid by all the Association's members. In a lawsuit between an HOA and its members, there is often no ability or mechanism, even for the "good guys," or the ultimate "winners," to recoup the costs of litigation. As a result, the entire cost of such lawsuits may end up being borne by all the owners of the homes in the development, through special assessments on each unit.

The homeowners should therefore carefully consider whether giving the re-scheduled 3/15/10 election a chance might be a better way to seat a board of directors, than litigating the dispute in court.

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Alternatively, the parties may want to consider consulting with a neutral mediator to assist the Bridle Path Homeowners Association members in settling this board of directors' elections dispute. Professional mediators work for a set fee and can be highly effective, because they are trained to deal with the suspicions, anger and emotions of people locked in a dispute. If hiring a mediator is an unwanted expense, perhaps in as large a community as Bridle Path, a respected member or "pillar" of the community might be able to serve in that capacity.

Conclusion

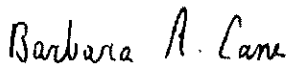
The Court concludes that the plaintiffs have shown "a possibility" that they will prevail on the merits of their claims in this lawsuit. However, based on the evidence presently before it, the Court cannot find that the plaintiffs have shown a "likelihood" that they will prevail -- which the law requires before a TRO or Preliminary Injunction could be obtained. (See *Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251.)

The Court concludes that the plaintiffs have not established that the Court should, or legally could at this point, intervene in this homeowner's association's board of directors' election dispute; or that the Court's attempting to make orders as to proxies and the like is necessary to maintain the "status quo."

Where voting rights are involved, a court must be especially cautious about intervening in an election, or "running" an election, without having solid evidence before it. Otherwise, a court's well-intentioned efforts may unfairly aid one candidate versus another, or may have the effect of discouraging the free exercise of voting rights by members of the homeowner's association.

The Court's Judicial Secretary is requested to post this decision online, on the Ventura County Superior Court's website at www.ventura.courts.ca.gov; and to serve copies on the counsel of record for the plaintiffs and the homeowners' association via facsimile and U. S. mail.

IT IS SO ORDERED.



BARBARA A. LANE
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

CASE NO. 56-2010-00366413

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 3855-F Alamo Street, Simi Valley, CA 93063. On February 5, 2010, I served the following document described as:

RULING ON SUBMITTED MATTER

By placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:

VIA FACSIMILE & U.S. MAIL

**CYNTHIA M PANDOLFI ESQ
L/O OF CYNTHIA M PANDOLFI
608 HAILEY COURT
SIMI VALLEY CA 93065**

**STEPHEN M LEVINE ESQ
WOLF RIFKIN SHAPIRO SCHULMAN
& RABKIN
11400 W OLYMPIC BLVD 9TH FLOOR
LOS ANGELES CA 90064-1582**

I am readily familiar with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service and/or interoffice mail on that same day with postage thereon fully prepaid at Simi Valley, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated and executed at Simi Valley, California on February 5, 2010.

**MICHAEL D. PLANET,
Executive Officer and Clerk**

By: 
Judicial Secretary

Declaration of Mailing