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DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac Street Centennial, CO 80112 (303) 649-6355	
Plaintiff: RHR INVESTMENT, LLC, a Colorado limited liability corporation vs. **Defendant**: TRIPLE J ARMORY, INC., a Colorado corporation	▲ COURT USE ONLY ▲ Case Np.: 2019CV030231 Div.: 21

ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER comes before the Court on Plaintiff RHR Investment, LLC's ("RHR") Motion for Preliminary Injunction against the Defendant Triple J Armory, Inc. ("JJJ"). The Court has considered the pleadings associated with the motion, conducted an evidentiary hearing on April 5, 2019 and heard the argument of counsel. The Court dispenses with any further argument and issues its ruling. Plaintiff's Motion is **DENIED**.

SUMMARY

RHR owns the property located at 8122 SouthPark Lane in Littleton, Colorado. JJJ is a tenant of a building located at 8152 SouthPark Lane in Littleton, Colorado. Both the RHR and JJJ property are located in the SouthPark Owners Association ("SPOA") and are subject to certain covenants, restrictions and use of reciprocal easements regarding the property at issue. RHR is seeking a preliminary injunction which would enjoin JJJ from the construction, operation of a shooting range, to modify or downsize its operations in order to conform to the parking restrictions identified in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of SouthPark, dated December, 2002 ("Declaration"). While RHR's articulated basis for the motion focuses on the parking at SouthPark, it is clear that RHR has other motives associated with JJJ's operation of a gun store and firing range at this property. JJJ contests this motion and believes that it is in compliance with the Declaration through the allocation of parking spots for its building. JJJ also contends that throughout the permitting and building process it has been forthright and has received the necessary approval for parking from the City of Littleton, SPOA and the landlord of the building.

STANDARD OF REVIEW

Pursuant to C.R.C.P. 65 a trial court may grant a motion for injunctive relief, if the moving party has demonstrated:

(1) A reasonable probability of success on the merits;
(2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief;
(3) that there is no plain, speedy, and adequate remedy at law;
(4) that the granting of a preliminary injunction will not disserve the public interest;
(5) that the balance of equities favors the injunction; and
(6) that the injunction will preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 648 P.2d at 653-54. (Colo. 1982).

Furthermore, the moving party bears the burden of showing the necessity of an injunction. *Anderson v. Applewood Water Assoc., Inc.,* 2016 COA 162, ¶ 16. If the moving party is not able to satisfy even one of these prerequisites, the Court must deny the motion. *High Plains Library Dist. v. Kirkmeyer*, 370 P.3d 254 (Colo. App. 2015).

ANALYSIS

RHR does not want JJJ to conduct the business of selling firearms nor to operate a shooting range on the property in question. During the permitting process, RHR raised concerns regarding character of the property, the concerns of other tenants and the fear of firearms being sold, carried and used at this property. Additionally, and parenthetically, RHR is also concerned about JJJ's calculation of the parking spots necessary to operate JJJ's business. However, the Declaration associated with this property does not contain a specific formula or restriction regarding JJJ's parking use. Therefore, RHR retained a private consulting firm, Walker Consultants, to assess JJJ's parking needs at the property. While Walker Consultants issued an opinion that JJJ did not have an adequate number of parking spots available to them, Walker Consultants may have relied on erroneous information and used a formula to calculate that was not previously articulated to JJJ during the permitting process.[1] It is this Court's opinion that RHR does not have a reasonable probability of success on the merits.

Section 6.1 of the Declaration states:

6. Parking Area

6.1 Non-Exclusive Use. All Parking in the Common Area is shown on **Exhibit C** hereto and shall be for the exclusive use of all Owners, Occupants and Users of the Parcel on which it is located; provided,

[1] While the Court considered the testimony of Mr. Robert Stanley of Walker Consultants, the specific details of his opinions and methodology remain somewhat vague as Exhibit 5 or a summary thereof was not admitted into evidence.

> however, the fifteen (15) parking spaces identified on **Exhibit F** shall be for the non-exclusive use of all Owners, Occupants and Users. In any instance where the amount of parking allocated to the separate Parcels is relevant, such as in meeting City of Littleton parking requirements, **Exhibit C** hereto, shall be controlling.

Exhibits C and F are virtually identical. However, Exhibit F specifically references a "Common Monument Sign" and a section of parking for "Non-Exclusive Parking." At issue in this case is JJJ's use of the fifteen (15) parking spots which are designated as "Non-Exclusive Parking" in Exhibit F.

The Court of Appeals in *Vista Ridge Master Homeowners Association Inc. v. Arcadia Holdings at Vista Ridge, LLC*, 300 P.3d 1004 (Colo. App. 2013) held that the construction of a declaration is a matter of law. To interpret a declaration, the court "must 'follow the dictates of plain English' " to construe the document as a whole. *Id.* (quoting *Double D Manor, Inc. v. Evergreen Meadows Homeowners' Ass'n,* 773 P.2d 1046, 1048 (Colo.1989)). If a declaration is clear on its face, it will be enforced as written.

The last clause of Section 6.1 is specifically at issue: "In any instance where the amount of parking allocated to the separate Parcels is relevant, such as in meeting City of Littleton parking requirements, **Exhibit C** hereto, shall be controlling." The plain language of this clause is clear and not ambiguous. Section 6.1 specifically refers the occupants to Exhibit C which identifies the parking spaces available for use. Almost prophetically, this clause and Exhibit C becomes relevant when certain circumstances become at issue. For example, the Declaration references the City of Littleton's parking requirements when parking allocation among the tenants becomes an issue. In this case, JJJ's building approval process and its parking requirements through the City of Littleton have been a significant issue from JJJ's initial construction application process to this date. Therefore, this last clause of Section 6.1 and Exhibit C are applicable to the Court's interpretation of the Declaration. Notably, Exhibit C does not contain any "non-exclusive" designation for parking. Therefore, it appears as if JJJ can rely upon these additional fifteen (15) parking spaces in connection with the allocation of parking attributed to JJJ.

Next, Walker Consultants analyzed a number of other locations and jurisdictions where shooting ranges were constructed and the number of parking spaces was allocated. It concluded that JJJ needed 77 parking spaces for its use and that it did not have that many parking spots attributed to them. Walker Consultants used the "per lane" method of calculating the number of parking spaces necessary for JJJ's operations. In contrast, JJJ used a "square footage usage" method for its calculation. However, neither methodology is specifically referenced in the Declaration. Therefore, Section 6.1 of the Declaration allowed the Parties some flexibility in the use of parking spots when attempting to comply with City of Littleton's parking requirements. In this case JJJ appropriately relied upon the Section 6.1 of the Declaration, the supporting exhibits and complied with the City of Littleton's parking requirements.

The Court also concludes that RHR has other plain, speedy, and adequate remedies available to it. First, RHR has filed an Amended Complaint where it claims that JJJ has breached a contract. This claim has not been resolved and is currently waiting to be set for trial. As such, this legal remedy is still being litigated. Next, RHR has other legal remedies regarding the potential unlawful parking at its property. For example, RHR has posted no-parking signage on certain portions its property. RHR warns the non-permitted users that their vehicle may be towed if they are parked in a properly designated area. However, RHR does not want to enforce this legal remedy against those who illegally park on their property. Instead, RHR asks this Court to prospectively enjoin JJJ and its customers when RHR has an immediately available remedy.

RHR has also failed to show that there is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief. RHR has voiced its concerns regarding the nature of this business since June 2018. Instead of seeking immediate injunctive relief, it attempted to exhaust a variety of other administrative means before initiating this lawsuit. RHR appeared before the City of Littleton City Council and voiced its objections. Additionally, RHR was previously involved in litigation (18 CV 32126) where SPOA attempted to secure injunctive relief against JJJ in November 2018. However, RHR remained silent during that litigation. RHR had the opportunity and forum to pursue a cross claim or raise any of these parking issues when 18 CV 32126 was pending before the Court. However, it did not.

Next, the Court does not believe that the granting of a preliminary injunction regarding parking will serve the public interest. Initially, the Court notes that the issue before it is not whether it is in the community's public interest to have a retail firearm and shooting range at this location. That issue has been resolved by the City of Littleton and SPOA. Instead, the issue before the Court is the parking usage at this business park.

The City of Littleton has previously approved JJJ's calculated parking use. Thus, the public's interest via its mayor and city council has addressed the public's concern regarding this type of business establishment and the parking infrastructure associated with its operation. The City of Littleton has concluded that JJJ's operation of its intended business is appropriate for its citizens.

The Court also concludes that the balance of equities do not favor injunctive relief. JJJ has received approval for the building permitting process, including parking, from the following entities: 1.) City of Littleton; 2.) SPOA; 3.) The Architectural and Development Control Committee; 4.) The landlord of SouthPark LLC. The City of Littleton did not have a specific code, ordinance or regulation regarding the allocation of parking for the type of business JJJ intended to operate. However, when presented with all information necessary for its consideration, the City of Littleton approved JJJ's parking calculations on November 1, 2018:

> "**There have been some suggestions that the city has not followed its own permitting requirements for Triple J. These suggestions are absolutely false…..The parking calculations submitted by Triple J met the city**

requirements." ("November 1, 2018, Report to the Mayor and Council on Triple J Armory.")

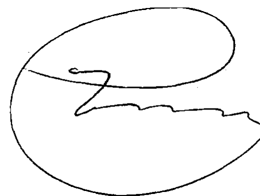
During this time JJJ justifiably relied upon those community and governmental entities which authorized the precise conduct RHR now complains of. Meanwhile, JJJ is still paying rent, has delayed construction, and has incurred potential lost profits as a result of the delay of the shooting range's grand opening.

Finally, the status quo of the Parties has remained the same. For example, the building footprints have not changed. All construction that JJJ has performed has been on the interior of the building.[2] The signage and striping regarding the parking has not changed. The number of parking spots has not changed. The only question regarding the disruption of the status quo is the actual number of JJJ customers who will use the parking at this campus. However, there is no competent evidence before this Court that other tenants will be displaced or that JJJ customers will disregard the posted no-parking signage.

For the reasons stated above, the Court **DENIES** RHR's Motion for a Preliminary Injunction. Additionally, this ruling eliminates the need for RHR to post a security bond pursuant to C.R.C.P 65(c). Finally, JJJ requests that this Court award it attorney's fees under the SPOA and Parklane Declarations. However, the Parties have not informed the Court which provision of the SPOA and Parklane Declarations are applicable for this determination and whether the SPOA and Parklane Declarations are stipulated to so that this Court can make this determination. Therefore, the Court Orders that within seven (7) days of this Order the Parties are to simultaneously brief this issue with no Responses or Replies. Finally, the Parties are Ordered to submit a Proposed Case Management Plan within fourteen (14) days of this Order.

Dated: April 8, 2019

BY THE COURT:



Frederick T. Martinez
District Court Judge

[2] Except signage and an HVAC system on the top of the building.