

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF NAVAJO

GORDON GROSS and LILIANA GROSS,
et al.,

Plaintiffs,

v.

THE SHORES AT RAINBOW LAKE
COMMUNITY ASC. An Arizona
Domestic Nonprofit Corporation,

Defendant.

No. S0900 CV202200042

Holbrook, Arizona

April 6, 2022

1:45 p.m.

BEFORE THE HONORABLE MICHALA M. RUECHEL

TRANSCRIPT OF PROCEEDINGS

Hearing on Petition for Preliminary Injunction

Proceedings recorded by electronic sound recording; transcript
produced by TheRecordXchange.

Lauren Thorud
Transcriptionist

I N D E X

April 6, 2022

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| <u>PLAINTIFF'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
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None

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| <u>DEFENDANT'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VD</u> |
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None

M I S C E L L A N E O U S

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APPEARANCES

April 6, 2022

Judge: Michala M. Ruechel

For the Plaintiff:

Matt Klopp

Stockton Banfield

Witnesses:

None

For the Defendant:

James L. Csontos

Witnesses:

None

Holbrook, Arizona

April 6, 2022

(The Honorable Michala M. Ruechel Presiding)

HEARING ON PETITION FOR PRELIMINARY INJUNCTION:

THE COURT: Gross v. the Shores at Rainbow Lake.

This is the date and time set for the hearing on the petition for preliminary injunction.

The -- and who's representing the Plaintiff in this matter?

MR. KLOPP: Your Honor, Matty Klopp. I -- also on the line is Stockton Banfield.

MR. BANFIELD: Good afternoon, Your Honor. This is Stockton Banfield.

THE COURT: Okay. And are any of the Plaintiffs on the line?

MR. KLOPP: Yes, Your Honor. Jeanette Zehring as well as Amy Bhola, who is the manager and member Bald Eagle Retreat, LLC.

THE COURT: Thank you.

And who is the attorney for Defendants?

MR. CSONTOS: Your Honor, this is James Csontos at Jennings Haug Keleher and McLeod on behalf of the Defendants.

THE COURT: Okay. And are your clients on the phone?

MR. CSONTOS: Mr. Whipple, president of the board is on the line as well.

1 THE COURT: Thank you.

2 Okay. Mr. Csontos, do you have anything you would
3 wish to present to the Court at this time? Or I'm sorry, Mr.
4 Klopp?

5 MR. KLOPP: Well, Your Honor, I wanted to first raise
6 an issue. A few days after Plaintiffs filed their complaint
7 and the request for a preliminary injunction, I -- we were
8 forwarded from general counsel for the HOA, (indiscernible) a
9 notice that the HOA published to their community indicating
10 that they would not be enforcing the subject amendment pending
11 the litigation.

12 I'm not entirely clear if that's still the case.
13 Because if it is, I'm wondering if we really need to have a
14 hearing and instead of the parties can just submit a form of
15 order that stipulates that there will be no enforcement,
16 pending litigation or further order of the Court, and then they
17 can proceed with, you know, the normal course through
18 disclosure and we'll go from there.

19 THE COURT: Thank you.

20 And Mr. Csontos, do you have a response to that?

21 MR. CSONTOS: I do, Your Honor. Mr. Klopp and I had
22 a conversation not -- it's been a couple weeks ago or so that
23 we discussed just that. And we were in agreement that we
24 wouldn't be holding those enforcement hearings or assessing
25 penalties at this point in time. Until we could maybe more

1 appropriately present the case to the Court, which we were
2 hoping to do on some sort of (indiscernible) of facts, which
3 I'm sure we'll be able to do. I don't know how many, but a
4 few. And maybe some evidentiary hearing of some sort or
5 another, and we haven't looked towards that yet.

6 But until that time, we were not going to hold
7 hearings or penal expos, although I still do believe that if
8 anybody is using their units as short term rentals, they may be
9 violating the amendment. But we're not going to seek to
10 enforce that right now.

11 THE COURT: Okay. Mr. Klopp, any reply?

12 MR. KLOPP: Mr. Csontos's memory is better than mine.
13 So I have -- I applaud him and I believe he's actually correct.
14 I think it probably makes sense for -- perhaps the Court can
15 set a deadline for Mr. Csontos and I to discuss, you know, some
16 sort of proposed order that would set that out and then we
17 could move in an expedited fashion, hopefully.

18 THE COURT: Okay. So at this point are -- based upon
19 the -- Defendants avow that they won't be seeking any --
20 conducting enforcement hearings or enforcing any sanctions
21 against the residents.

22 Are you withdrawing your motion for a preliminary
23 injunction?

24 MR. KLOPP: Yes, Your Honor. And I think it may make
25 sense then if Your Honor or Mr. Csontos disagree, we meet and

1 address that in the order itself. The motion will be withdrawn
2 and the parties stipulate that the enforcement will be held in
3 abeyance, and perhaps any other particulars on what the parties
4 may want to submit to try to straighten one in and expedite
5 this for Your Honor.

6 THE COURT: And are you in agreement with that, Mr.
7 Csontos?

8 MR. CSONTOS: I am, Your Honor. I think we may
9 revisit the preliminary injunction perhaps later on. But as
10 part of our process, that need not be decided today, I guess.

11 THE COURT: All right. Okay.

12 MR. CSONTOS: We will work towards the profits and
13 give it a work see if we can.

14 THE COURT: Okay. For the record, Plaintiff's
15 counsel -- or based upon an agreement between the parties,
16 Plaintiff's counsel is not asking to proceed with the
17 preliminary injunction today. They will meet to further
18 discuss the issue and file a proposed order with the Court for
19 the Court's consideration. Let's leave it at that.

20 Now, moving forward, what can the Court do to assist
21 the parties in ultimately resolving this matter?

22 Mr. Klopp, what do you think would be good?

23 MR. KLOPP: Well, Your Honor, I think Mr. Csontos and
24 my client mostly in agreement on this. I don't know that there
25 are too many facts here that are in dispute. Certainly not

1 with respect to the issues that are proposed in the motion for
2 preliminary injunction that's being withdrawn. And I'm
3 wondering if perhaps there's a way -- and I don't like to
4 burden the Court with more than one dispositive motion. But
5 Plaintiff's position is that there is a good dispositive motion
6 to invalidate the amendment and there aren't any facts that
7 would be in dispute at all with respect to those issues because
8 they're purely legal based on the documents, you know, in the
9 public record.

10 Depending on the outcome of that, there are probably
11 some very limited issues that would require an evidentiary
12 hearing, but I don't believe it would be very much, and
13 hopefully we can get them resolved without having to burden the
14 Court with any hearings.

15 THE COURT: Okay. And Mr. Csontos, same question to
16 you.

17 MR. CSONTOS: Nothing further, Your Honor, on that
18 issue. It is your Court. If Your Honor would be willing to
19 hear the legal issue first and then want to preside it in one
20 particular way and hear the evidentiary portion second, that
21 would be fine with me. And the (indiscernible) is asking the
22 Court to schedule as well and the ability to conduct multiple
23 hearings.

24 THE COURT: Okay. What I'm hearing is that the
25 parties aren't at this point request any further hearing but

1 intend to file dispositive motions or likely to be dispositive
2 -- but possibly dispositive motions for summary judgment. And
3 in which case, the Court will simply wait for those to get
4 filed and then move forward from that process. Is that
5 correct?

6 MR. KLOPP: This is Mr. Klopp, Your Honor --

7 MR. CSONTOS: Yes, Your Honor. This is Mr. Csontos.
8 I'm sorry. I don't mean to.

9 THE COURT: Okay. Thank you. Okay. And then I
10 guess lastly, do the parties believe that perhaps mediation or
11 some other alternate dispute resolution or a judicial
12 settlement conference might be beneficial in this matter? Or
13 do you not believe that there's any point at this time?

14 MR. KLOPP: This is Mr. Klopp, Your Honor. I always
15 encourage mediation. That might be something perhaps I can
16 talk to -- Mr. Csontos and I can discuss to see if doing --
17 where that may make sense, if that's something that everybody
18 thinks should be happening earlier rather than later, if that
19 makes sense.

20 THE COURT: Okay. All right. If the parties
21 certainly want to go to private mediation, that's fine. I
22 certainly encourage that. If the parties are requesting a
23 judicial settlement conference in front of another judge,
24 please let me know and I will get that set up as quickly as I
25 can.

1 MR. KLOPP: Thank you, Your Honor.

2 MR. CSONTOS: Thank you.

3 THE COURT: Is there anything else that we can
4 accomplish today?

5 And sorry, Mr. Csontos this time.

6 MR. CSONTOS: No, Your Honor.

7 THE COURT: Okay. And Mr. Klopp?

8 MR. KLOPP: No, Your Honor.

9 THE COURT: Okay. Thank you. What I'm going to do
10 is, I'm going to put this on a nonappearance calendar for April
11 25th at 5:00, just to determine if there's any proposed
12 stipulation and order filed with the Court.

13 MR. KLOPP: Very good, Your Honor.

14 THE COURT: Okay. Thank you all very much. Good
15 luck and we will talk to you soon.

16 We stand adjourned.

17 (Proceedings adjourned at 1:56 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/
John Buckley, CET-623
Digital Court Proofreader