

Calaveras Superior Court
Civil Law & Motion Calendar
Hon. David M. Sanders, Courtroom 2
Friday, April 16, 2021

9:00 AM 20CV45056 Motion Hearing for Injunctive Relief 12/01/2020 08/18/2021 Case Management Conference

Ptff/Pet: Vancleave, Kristina

Atty: Hamilton, Alan D

Def/Res: Cabinetsnmore Inc; Hatcher, Matt; Taurian, Jeff

Atty: Hobson, Kevin Joseph

Tentative Ruling: On December 1, 2020, plaintiff filed her complaint; on January 5, 2021, defendants answered. On March 19, 2021, plaintiff filed this motion requesting a prohibitory preliminary injunction against defendants preventing further trespass onto her property and a mandatory preliminary injunction directing defendants to re-connect the sewer line serving the outbuilding on her property to the public sewer to the sewer line on defendant Hatcher's property.

In *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70, the California Supreme Court ruled:

". . . trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued." As the court in *IT Corp.* further noted: "The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause. [Citation.]" (*Id.* at p. 73, 196 Cal.Rptr. 715, 672 P.2d 121, italics added.)

Regardless of the balance of interim harm, the Court may not grant a preliminary injunction unless there is some possibility that the plaintiff will ultimately prevail on the merits of its claim. (*White v Davis* (2003) 30 CA4th 528, 561-562.) The Court also held that when there is no likelihood that the plaintiff will prevail, an injunction that favors the plaintiff does not serve any valid purpose and can only cause needless harm. (*Aiuto v City & County of San Francisco* (2011) 201 CA4th 1347, 1361.)

Consideration of interim harm to plaintiff includes analysis of: (1) the inadequacy of other remedies; (2) the degree of irreparable injury the denial of the injunction would cause; and (3) the necessity of preserving the status quo. (*Id.* at 1350.) Further, the Court must exercise discretion in favor of the party most likely to be injured. The balance of harms dramatically favors granting a preliminary injunction, because alleged harm to plaintiffs by denying an injunction is great and would cause great immediate harm to many persons. (*White v Davis*, *supra*, 30 C4th at 561.)

Plaintiff's request for an injunction for possible future trespass that may occur is speculative. Plaintiff has adequate remedies at law as to any claims of trespass that have already occurred. Although plaintiff may prevail on the merits at trial, she is not likely to suffer interim harm based on concerns of possible future trespass.

Although plaintiff did not specifically request defendant Hatcher deed a six-foot-wide utility easement in an undefined location, plaintiff did inferentially request such an easement to reconnect the sewer line to serve her outbuilding. This claim is not likely to prevail at trial. The Court must exercise discretion in favor of the party most likely to be injured, which in this case would be defendant Hatcher. Hatcher would be injured by being forced to provide an easement when plaintiff can install a sewer line across her own property, particularly noting there is evidence before the Court that the local utility district considers connecting to an adjacent property owner's line to be improper.

Overall, plaintiff has not shown sufficient evidence through her pleadings that a preliminary injunction should be granted at this time, either based on the likelihood of prevailing at trial or the lack of an adequate remedy at law. Based on the foregoing, plaintiff's motion is DENIED; this denial is without prejudice as to the prohibitory preliminary injunction should defendants manifest an intention to further trespass.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal order pursuant to Rule 3.1312 in conformity with this ruling.