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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

SAN JOAQUIN MOTEL AND HOTEL PROPERTY OWNERS ASSOCIATION, Plaintiff and Respondent, v. CITY OF STOCKTON, Defendant and Appellant.	C040463 (Super. Ct. No. CV015543)

In an effort to make downtown residential hotels safer and more habitable, defendant City of Stockton (City) began vigorously enforcing city building codes. Plaintiff San Joaquin Motel and Hotel Property Owners Association (Association) sought a preliminary injunction prohibiting the City from requiring hotels cited for violations to be upgraded to current Uniform Building Code (UBC) standards. Following a series of hearings, the trial court found the UBC standards in effect at the time the hotels were built to be the controlling standards and issued a preliminary injunction prohibiting the City from requiring hotel owners to upgrade to current standards. The injunction

also prohibited the City from demolishing hotels within the first 90 days after citations were issued. The City appeals, arguing: (1) the Association lacks standing; (2) the Association failed to exhaust its administrative remedies; (3) the injunction is overly broad and vague; (4) no irreparable injury justifies the injunction; (5) the injunction prevents the enforcement of a law for the public benefit; (6) the injunction gives more relief than sought; and (7) the injunction unlawfully enjoins the City from demolishing hotels. We find no error and shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Association filed a complaint for injunctive relief against the City. The complaint alleged that, beginning in 2001, a City task force began vigorously enforcing building codes on hotels in the downtown area. The City employed a zero tolerance policy and found hypertechnical code violations.

According to the complaint, the City failed to allow hotel owners reasonable time to make repairs. Owners were given 30 days to make repairs. If a hotel owner failed to comply, the City issued a certificate of noncompliance, resulting in a notice to vacate the premises. The City then required a certificate of occupancy to reopen the hotel. However, in order to receive a certificate of occupancy, the City required the hotel be retrofitted to meet all existing codes. The City also filed liens against each property, which prevented the owners from borrowing money for repairs. The cost of retrofitting

hotels built 60 to 100 years ago is prohibitive and threatens to drive the owners out of business.

Further, according to the complaint, the City engaged in a campaign to drive downtown hotels out of business. The City performed a second inspection after repairs were made and sometimes revoked building permits after repairs began.

The complaint requests an injunction prohibiting the City from: (1) "[c]ontinuing a policy wherein if a building is involuntarily vacated because of an abatement order by the City . . . a certificate of occupancy would not be issued unless the hotel was brought up to existing codes;" (2) "refusing to permit a reasonable period of time to make repairs and/or grant reasonable extensions of time . . . ;" and (3) "reinspecting the premises to find new violations on the same areas of the hotels which have already been inspected and cleared[.]"

In the memorandum of points and authorities in support of the preliminary injunction, the Association emphasized it did not oppose the City's enforcement of the codes. The Association was "only requesting that they not be subjected to serial inspections, be given a reasonable time to make the repairs, and not be required to retro-fit buildings . . . ."

Subsequently, the Association filed a request for a temporary restraining order (TRO). The request led to a succession of free-flowing hearings beginning on November 7, 2001, followed by hearings on November 16 and 21, 2001, and leading ultimately to an order on January 25, 2002, granting the

Association's petition for a preliminary injunction.[1] At the November 7 hearing, the City questioned the legitimacy of the Association and argued the Association had failed to exhaust its administrative remedies. The court took note of pending administrative appeals involving members of the Association scheduled for hearing on November 14, expressed the opinion that exhaustion of administrative remedies was required, and, without ruling on the request for a temporary restraining order, continued the hearing to November 16.

The trial court held a second hearing on November 16, 2001. No testimony was adduced. The court began by inquiring whether the City was pursuing a policy of shutting down downtown hotels as part of a redevelopment plan. The City denied such a policy but admitted appraising properties with an eye to exercising its eminent domain powers. The court asked why, if the City's primary concern was health and safety, it revoked building permits on hotel owners who were attempting to repair their buildings. The City responded the permits were revoked when structural defects were found. A representative from California Rural Legal Assistance stated that approximately 200 people had been displaced by the closure of downtown hotels.

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[1] What began as a hearing on a TRO morphed into a hearing on the preliminary injunction. The trial court allowed the City an extension of time to file its opposition prior to the court's ruling. Although the City alludes to their informality, neither party objected to the procedures utilized by the court.

The court delayed ruling on the temporary restraining order and summarized the main issue involved: "I think the main issues at the TRO is whether an involuntary lack of occupancy certificate triggers the enforcement of the new codes."

The court held a final hearing on November 21, 2001. The court began the hearing by setting out the issue involved: "[T]he issue to be decided is if there is an involuntary loss of the occupancy permit, if that triggers the hotel having to be brought up to present day standards. It is not the issue of whether or not to enforce City ordinances. City ordinances are enforceable." The Association presented testimony by Arvind Patel, one of its members and a hotel owner. Patel testified the City performed prior inspections on his hotel and found no violations. However, in 2001 the City again inspected and issued a notice of violation, citing 294 separate violations. The City then issued a notice and order to vacate, requiring Patel to bring the hotel up to current codes. The hotel is approximately 80 years old. Patel had made $30,000 in repairs since he received the notice of violation.

Patel also testified as to the makeup of the Association. The Association consists of 40 to 45 members who meet once a week. It was founded in 1992 and requires $100 in dues per member every three years.

Patel stated he was asking for a reasonable time to make repairs, that the order to vacate not be considered voluntary, that he not be required to retrofit to meet current codes, and that the City delay recording liens. On cross-examination,

Patel stated he had filed an appeal, but no hearing date had been set.

The City offered testimony by Dale Himes, the City's building official and community development department director. Himes stated the notice to vacate had been rescinded on Patel's hotel. According to Himes, the City had revoked only two building permits in the past.

Himes explained his staff had met and formulated a plan to bring downtown hotels into habitable shape. Initially, the group considered issuing demolition notices. However, according to Himes: "At that point in time, it was explored about the occupancy issue. If they lose their certificate of occupancy because the building is not habitable and it has been vacated, then what is due diligence? We have to bring the building back into habitable condition. And that was explored at that meeting, too. That seemed like kind of the middle of the road, not as aggressive as a demolition notice."

Ultimately, the trial court granted the Association's request for preliminary injunctive relief, issuing "a preliminary injunction prohibiting the city from requiring the hotel owners to upgrade their hotels to current standards. The Uniform Building Code in effect at the time the hotels were built is the correct standard. [¶] The Court likewise prohibits the city from demolishing hotels within the first 90 (ninety) days after citations are issued."

Following entry of judgment, the City filed a timely notice of appeal.

DISCUSSION

Standard of Review

As we have observed, "'The law is well settled that the decision to grant a preliminary injunction rests in the sound discretion of the trial court.' [Citation.] The party challenging an order granting or denying a preliminary injunction has the burden of making a clear showing of an abuse of discretion. [Citation.] An abuse of discretion will be found only where the trial court's decision exceeds the bounds of reason or contravenes the uncontradicted evidence. [Citation.] [¶] In determining whether or not to issue a preliminary injunction, a trial court must evaluate two interrelated factors. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm the plaintiff may suffer if the injunction is denied as compared to the harm that the defendant may suffer if the injunction is granted. [Citation.] In thus balancing the respective equities of the parties, the court must determine whether, pending a trial on the merits, the defendant should or should not be restrained from exercising the right claimed by it. [Citation.]" (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1470-1471 (*Tahoe Keys*).)

"Where . . . the defendants are public agencies and the plaintiff seeks to restrain them in the performance of their duties, public policy considerations also come into play. There is a general rule against enjoining public officers or agencies

from performing their duties. [Citations.] This rule would not preclude a court from enjoining unconstitutional or void acts, but to support a request for such relief the plaintiff must make a significant showing of irreparable injury." (*Tahoe Keys*, *supra*, 23 Cal.App.4th at p. 1471.)

Standing

The City contends the Association lacks standing to obtain the preliminary injunction. According to the City, the Association does not assert any public interest in its request for a preliminary injunction. In the City's view, "It was brought solely to protect the private financial interest of hotel owners." The City also contends the Association failed to identify its members.

As the City acknowledges, an association may have standing to sue in a representative capacity on behalf of its members whether or not a case is brought as a class action. (*Salton City etc. Owners Assn. v. M. Penn Phillips Co.* (1977) 75 Cal.App.3d 184.) "In recent years there has been a marked accommodation of formerly strict procedural requirements of standing to sue [citation] and even of capacity to sue [citation] where matters relating to the 'social and economic realities of the present-day organization of society' [citation] are concerned." (*Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 122 (*Beverly Glen*).)

Courts have recognized the right of an unincorporated association to sue to assert a public interest and to challenge governmental action. In *Beverly Glen*, the court found a

homeowners association had standing to sue to challenge the city's issuance of a conditional use permit to a developer. The association alleged its members resided in the area affected by the challenged project and would suffer injury if the project were allowed to proceed. (*Beverly Glen*, *supra*, 34 Cal.App.3d at p. 121.) The city argued the association did not own any property in the city and was not a taxpayer. (*Ibid.*) The court rejected this argument and found the association possessed standing to sue: "Since Residents has alleged that its members suffered injuries, since it is clearly inferable that Residents seeks to represent those members, and since we have held that Residents had standing to seek redress for the injuries allegedly suffered by its members, defendants' declarations are insufficient to sustain the summary judgment [citations]." (*Id.* at p. 128.)

An association comprised of taxpayers, residents, landowners, and voters challenged the validity of numerous annexations of territories to the city of San Jose in *Citizens Against Forced Annexation v. County of Santa Clara* (1984) 153 Cal.App.3d 89 (*Citizens*). The court found the unincorporated association was an interested person under the statute in question and found it had standing to challenge the government action. (*Id.* at pp. 97-98.)

The court in *Citizens* noted the association was not suing for damages but, rather, was asserting a public right, the right to have public agencies comply with annexation procedures. (*Citizens*, *supra*, 153 Cal.App.3d at p. 96.) In addition, the

court found the association was composed of individuals who, "in general, oppose annexations. Apparently, its sole purpose for existence is to watch for and follow annexation proceedings and to test the validity of annexations when they occur." (*Id.* at p. 97.)

In *McKeon v. Hastings College* (1986) 185 Cal.App.3d 877 (*McKeon*), a community group and tenants of residential hotels who were dislocated by defendant law school's acquisition of property for its expansion program sought to compel defendant to provide benefits under the state Relocation Assistance Act. (Gov. Code, § 7260 et seq.) The court considered whether the community group had standing to sue. The community group, an unincorporated association of individuals and agencies engaged in issues involving low-income housing, was interested in assuring that individuals displaced by defendant's actions received all available benefits. (*McKeon*, *supra*, 185 Cal.App.3d at p. 892.)

The court found the association had standing: "The participation of incorporated and unincorporated associations such as COFAR has become common and accepted in public interest-oriented litigation and activities. . . . The need for housing clearly qualifies as one of the most basic 'social and economic realities of the present-day organization of society' and has been recognized as such. [Citations.]" (*McKeon*, *supra*, 185 Cal.App.3d at pp. 892-893.) The court concluded the association was pursuing more than privately held rights and was

asserting more than privately held grievances: Its members were acting in the public interest. (*Id.* at p. 893.)

In the present case, the Association contends its request for a preliminary injunction raises the very important public question of the proper enforcement of the City's codes and the impact of targeted enforcement on low income hotel residents. We agree.

The fulcrum of the Association's case is the interplay between the crackdown on downtown residential hotel code violations and the City's redevelopment plans. In the trial court, the Association argued the City selectively enforced the codes and prevented owners from making necessary repairs in order to shut down the properties to make way for redevelopment. In response, the court stated: "Well, as bad as these hotels can be, they provide public service to the downtrodden of Stockton. I mean, it is the only place they can afford to live."

In our view, the preliminary injunction sought in the present case centers on an issue of public importance: the availability of inexpensive housing in city centers. The City's enforcement policy impacts the ability of downtown hotel owners to repair and maintain low-income hotels.

The City seizes on the Association's comment that "Absolutely it is economics" to argue no public issue exists. We disagree. Here, the public issue is inseparable from the economics of real estate and repair in the downtown area. By forcing hotel owners to bring aging hotels up to current codes,

the City is erecting enormous obstacles for the hotel owners to overcome. The equation seems basic: The more expensive the City makes code compliance, the less likely the owner will be able to stay in business, the business of providing low-income housing.

The City also contends the Association failed to identify its members "with any accuracy." However, the court ordered the Association to provide a list of its members. The Association provided such a list and the City questioned the Association about members listed.

The Association had standing to bring the complaint for a preliminary injunction.

Exhaustion of Administrative Remedies

The City contends the trial court lacked jurisdiction to issue the preliminary injunction because the Association failed to exhaust its administrative remedies. According to the City, any hotel owner served with an order to vacate can administratively appeal the order, and several such appeals were pending when the Association filed its complaint. The City argues, "There is no reason to excuse the failure to exhaust."

The exhaustion of an administrative remedy, where one is available, is a condition precedent to obtaining judicial relief, and a court violating the rule acts in excess of jurisdiction. (*Morton v. Superior Court* (1970) 9 Cal.App.3d 977, 981.) Here, the trial court repeatedly pointed out the availability of an administrative remedy to hotel owners during the three hearings. However, the court issued the preliminary

injunction without commenting on the exhaustion of remedies issue.

During the hearing, the court appeared to focus on the constitutionality of the City's procedures in shutting down hotels: "I think the main issues at the TRO is whether an involuntary lack of occupancy certificate triggers the enforcement of the new codes. [¶] I think that is a very important issue. Where you go in and deliberately shut them down and now you say you have to bring it up to common code, I think there could be some interim ground . . . ."

An exception to the exhaustion doctrine exists in actions challenging the constitutionality of the procedures of an administrative agency. As the Supreme Court in *State of California v. Superior Court* (1974) 12 Cal.3d 237, 251 noted: "It would be heroic indeed to compel a party to appear before an administrative body to challenge its very existence and to expect a dispassionate hearing before its preponderantly lay membership on the constitutionality of the statute establishing its status and functions." (See also *Lund v. California State Employees Assn.* (1990) 222 Cal.App.3d 174, 183.)

The City touches elliptically on the Association's constitutionality exception argument, contending the Association's "argument that exhaustion was not required because the Association was seeking to challenge an allegedly unlawful 'pattern and practice' must be rejected. No 'pattern or practice' exception to the exhaustion requirement exists." The pattern and practice the City dismisses as an invalid exception

appears to be another way of describing the Association's challenge to the constitutionality of the procedures employed by the City in enforcing its codes. The Association objects to the City's selective enforcement of its codes, an equal protection argument, and the City's curtailment of the owner's ability to correct violations before issuance of a certificate of occupancy, a due process argument.

The exhaustion doctrine does not apply where the challenge is to the constitutionality of an agency's procedures. (*Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 621.) Here, the Association is not challenging the constitutionality of codes the City seeks to enforce. Instead, the Association focuses its constitutionality challenge on the procedures employed by the City in enforcing its codes. Specifically, the Association questions the constitutionality of forcing hotel owners to bring their hotels up to current code following an order to obtain a certificate of occupancy.

We are persuaded the court possessed jurisdiction to decide the Association's complaint for injunctive relief. The Association challenged the constitutionality of the City's enforcement procedures; therefore, the Association was not required to exhaust its administrative remedies before bringing suit in the trial court.

Scope of Injunction

The City argues the court issued an injunction that "sweeps too broadly and is too indefinite to be upheld." As the City points out, a preliminary injunction must be definite enough to

provide a standard of conduct for those whose activities are proscribed as well as a standard for the ascertainment of violations of the injunction by courts called upon to apply the injunction. (*Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 250 (*Chico Feminist Women's Health*).)

The City objects to the scope of the injunction, arguing it applies to all hotels regardless of whether their owners belong to the Association and regardless of their location. According to the City, the record does not support such an all-inclusive injunction.

We disagree. The Association challenges the procedures utilized by the City to enforce codes on cited hotels. If the procedure is unconstitutional, it is unconstitutional no matter where the hotel is located and no matter who owns the hotel.

The City also argues the injunction's language regarding "current standards" is impermissibly vague. The City also criticizes the court's reference to the UBC, contending the UBC is not a citation to a particular law. Rather condescendingly, the City proposes to "try to explain to this Court, the codes dealing with 'building' standards, including the uniform building codes, are too complicated and complex to issue a far-reaching two sentence injunction or to understand the trial court's cryptic Injunction."

True to its word, the City presents a jarringly detailed explanation of the tangled web of building codes. However, the City concludes by admitting: "The language in the order to vacate the City served on Patel, requiring him to upgrade his

hotel to the building code standards for 'new construction' [citation], *may have been unfortunate*, and the City's attempt to explain the language at the hearings on the TRO may have seemed confused or contrived to the judge. But the building codes are confusing and can be interpreted in various ways." (Italics added.)

The court in issuing the injunction may not have plunged into the esoteric language of varieties of building codes, but it did clearly and concisely prohibit the City from requiring the hotel owners to retrofit their buildings to comply with current codes following the loss of an occupancy permit. The injunction was intended to address the City's practice of revoking occupancy permits and thereafter requiring owners, in order to obtain a certificate of occupancy, to comply with building standards ordinarily applied to new construction. The injunction unequivocally bars this practice, providing language definite enough to both alert the City as to what conduct is prohibited and to inform the court as to when violations occur. (*Chico Feminist Women's Health*, *supra*, 208 Cal.App.3d at p. 250.) The court did not address the enforceability of building codes generally, and we do not construe the injunction as immunizing hotel owners from building code enforcement.

Lack of Irreparable Injury

The City contends the court erred in issuing the preliminary injunction since no evidence of imminent or irreparable injury to the Association exists. The City argues, "Of the eight or nine hotels that had been given the notices and

orders to vacate . . . [Association's counsel] admitted only two hotels were vacant at the time of the hearing. [Citation.] At the time of the last hearing on the TRO, there was no evidence that the others were in danger of being vacated and, indeed, the evidence was that some had sought administrative review (and obtained stays) and that some were curing any violations or otherwise working out matters with the City."

To qualify for preliminary injunctive relief, the plaintiff must show irreparable injury, either existing or threatened. To satisfy this requirement, it is incumbent upon the plaintiff to present evidence. (*Loder v. City of Glendale* (1989) 216 Cal.App.3d 777, 782-783.) The essential features marking an injury as irreparable are that the injury is an act that is a serious change of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoyed. The property must have some peculiar quality or use such that its pecuniary value as estimated by a jury will not fairly recompense the owner for its loss. (*Grey v. Webb* (1979) 97 Cal.App.3d 232, 238.)

We reiterate, the grant of a preliminary injunction lies within the discretion of the trial court, and an explicit finding of irreparable harm is not required to sustain the trial court's exercise of that discretion. (*MCA Records, Inc. v. Newton-John* (1979) 90 Cal.App.3d 18, 23.) We consider whether substantial evidence supports the allegation of irreparable harm. (*Ibid.*)

Here, the Association presented evidence that several hotel owners had been served with orders to vacate, triggering the requirement that the hotels be upgraded to current standards in order to be reoccupied. The City minimizes the impact of these current orders to vacate. However, the function of a preliminary injunction is not merely to contain ongoing damage but to prevent prospective damage. To that end, a trial court must exercise its discretion in favor of the party most likely to be injured. (*Nutro Products, Inc v. Cole Grain Co.* (1992) 3 Cal.App.4th 860, 867.) During the hearing, the Association pointed out that properties were being put out of business. We find the Association presented sufficient evidence that the City's actions posed a threat of harm to the property of Association members.

Public Benefit

The City contends the court's action in issuing the preliminary injunction runs afoul of Civil Code section 3423, subdivision (d) and Code of Civil Procedure section 526, subdivision (b)(4), which provide that an injunction cannot be granted to prevent execution of a public statute by officers of the law for the public benefit. However, these prohibitions do not apply in four specific situations: "(1) where the statute is unconstitutional and there is a showing of irreparable injury; (2) where the statute is valid but is enforced in an unconstitutional manner; (3) where the statute is valid but, as construed, does not apply to the plaintiff; and (4) where the

public official's action exceeds his or her authority." (*Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 501.)

The instant case implicates the second exception to the general prohibition against injunctive relief. As we have noted, the Association challenges the enforcement of the City's statute requiring hotel owners to bring hotels up to current codes in order to reoccupy their buildings after receiving a notice to vacate. The Association, in requesting injunctive relief, argued the City's enforcement policies were selectively driving owners of older downtown hotels out of business. In effect, the Association argued the City's procedures deprived its members of due process, unfairly targeting and depriving them of their downtown properties. The injunction, issued to protect the constitutional rights of hotel owners, does not run afoul of the cited statutes.

Scope of Relief

The City contends the court erred in issuing an injunction that provided more relief than that sought by the Association. The City argues the injunction gives the Association "far more relief" than it sought in its complaint. We are not persuaded.

In its complaint, the Association requested the court enjoin the City from continuing its policy of requiring hotel owners to bring their buildings up to current codes in order to obtain a certificate of occupancy. The injunction prohibits "the city from requiring the hotel owners to upgrade their hotels to current standards." The injunction comports with the relief sought by the Association.

Demolition Prohibition

Finally, the City argues the injunction unlawfully prohibits the City from demolishing hotels within the first 90 days after citations are issued. The City "cannot even hazard a guess why the court included this prohibition."

During the final hearing, the City's building official described the process for "abatement of dangerous buildings": "If we do a notice and order to repair, that notice and order to repair is recorded. Unless it is just an issue to a correction notice. I know in the past they have issued correction notices or notice and orders to repair or demolition or vacation depending on the gravity of the conditions that exist." Thus, the City's own witness brought up the prospect of demolition notices being issued following a notice and order to repair. The court, in fashioning the preliminary injunction, took this aspect of the City's procedure into consideration. We find no error.

DISPOSITION

The judgment is affirmed. The Association shall recover costs on appeal.

RAYE, J.

We concur:

DAVIS, Acting P.J.

HULL, J.