

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

05 SEP 13 PM 12:15 FOURTH JUDICIAL DISTRICT

Community Health and Education
Corporation, a Minnesota non-profit
corporation, Shady Lane Court Residents
Association, Robert Dalbec, as Attorney-in-
Fact for Olive Dalbec, Beverly Adrian, and
Pedro Rubio,

HENNEPIN CO. DISTRICT
COURT ADMINISTRATOR

Plaintiffs,

**ORDER GRANTING PARTIAL
TEMPORARY INJUNCTION**

vs.

Portland Park L.L.P., a Minnesota limited
liability partnership, Portland Commons LLC,
a Minnesota limited liability company,
Dennis Peterson, and Jake Peterson,

Court File No. CT 05-11318

Defendants.

The above-entitled matter came on for hearing on September 12, 2005, before the Honorable Heidi S. Schellhas, Judge of District Court, at the Hennepin County Government Center, Courts Tower, in Minneapolis, Minnesota, on the plaintiffs' motion for a temporary injunction.

D. Charles Macdonald of Faegre & Benson LLP, appeared for Plaintiff Community Health and Education Corporation a Minnesota non-profit corporation.

Timothy L. Thompson of Housing Preservation Project, appeared for Plaintiffs Shady Lane Court Residents Association, Robert Dalbec, as attorney-in-fact for Olive Dalbec, Beverly Adrian, and Pedro Rubio.

Joseph L. Langel of Ratwik, Roszak & Maloney, P.A., appeared for Defendants Portland Park L.L.P., Dennis Peterson and Jake Peterson.

George R. Serdar and Cheryl A. Stanton, of Messerli & Kramer P.A., appeared for Defendant Portland Commons LLC.

Based upon the parties' submissions and their written and oral arguments, and on all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT¹

1. On June 1, 2005, pursuant to Minn. Stat. § 327C.095, subd. 6, Portland Park L.L.P. ("Portland Park") notified the residents of Shady Lane Court of the intent of Portland Commons LLC ("Portland Commons") to close Shady Lane Court, which started a nine-month closure process under Minn. Stat. § 327C.095, subd. 1.
2. Portland Commons has an option agreement to purchase Shady Lane Court from Portland Park.
3. Under Minn. Stat. § 327C.095, subd. 6, the owners of at least 51 percent of the manufactured homes in Shady Lane Court or a non-profit organization which has the written permission to act on their behalf, have the right to meet the cash price² of the purchaser and the same terms and conditions as set forth in the purchaser's offer except that the seller is not obligated to provide owner financing.
4. Plaintiff Community Health and Education Corporation ("CHEC"), a non-profit organization, claims that it has obtained the approval of at least 51 percent of the owners of manufactured homes in Shady Lane Court to exercise the right of first refusal on their behalf, pursuant to Minn. Stat. § 327C.095, subd. 6.
5. On July 11, 2005, within 45 days of June 1, 2005, purportedly with the written permission of at least 51 percent of the owners of manufactured homes at Shady Lane Court, CHEC informed Portland Park of its intent to meet the cash price and same terms and conditions as set forth in the proposed purchase agreement attached to the option agreement between Portland Park and Portland Commons, pursuant to Minn. Stat. § 327C.095, subd. 6.
6. Within the statutory period allowed under Minn. Stat. § 327C.095, subd. 6, CHEC signed a purchase agreement and tendered to Portland Park a check for \$100,000, as earnest

¹ The facts set forth in the "Findings of Fact" are not intended to constitute findings of fact within the meaning of Minn. Stat. § 546.27, subd. 1.

² Under Minn. Stat. § 327C.095, subd. 6, cash price means the cash price offer or equivalent cash offer as defined in Minn. Stat. § 500.245, subd. 1(d). Pursuant to Minn. Stat. § 500.245, subd. 1(d), a cash price offer is one that involves simultaneous transfer of title for payment of the entire amount of the offer. If the acceptable offer made by a third party is a time-price offer, the seller or lessor must make the same time-price offer or an equivalent cash offer to the immediately preceding former owner. An equivalent cash offer is equal to the total of the payments made over a period of the time-price offer discounted by yield curve of the United States treasury notes and bonds of similar maturity on the first business day of the month in which the offer is personally delivered or mailed for time periods similar to the time period covered by the time-price offer, plus 2.0 percent. A time-price offer is an offer that is financed entirely or partially by the seller and includes an offer to purchase under a contract for deed or mortgage. *Id.*

money. The purchase agreement signed by CHEC is identical to that proposed between Portland Park and Portland Commons.

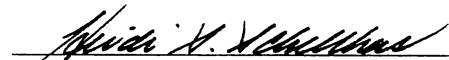
7. Portland Park has refused to accept CHEC's offer to purchase the property on which Shady Lane Court is situated.
8. The plaintiffs claim that Portland Park and its agents have repeatedly contacted residents with the intention of inducing residents to revoke the right of CHEC to exercise the right of first refusal, and that in an attempt to convince residents to waive their rights, agents of the Park have engaged in false and misleading statements.
9. CHEC has sought the following injunctive relief: (1) a temporary injunction preventing Portland Park and Portland Commons from closing on the sale of Shady Lane Court; (2) a temporary injunction prohibiting the defendants from taking any steps to close Shady Lane Court, relocate residents, or terminate the tenancies of any resident and tolling the further running of the nine-month notice period for closing Shady Lane Court; (3) a temporary injunction against Portland Park enjoining it from denying CHEC full access to Shady Lane Court, for the purpose of inspecting Shady Lane Court's conditions; and (4) a temporary injunction against all defendants from initiating any communications with Shady Lane Court's residents for the purpose of inducing residents to waive their rights to purchase Shady Lane Court and any other rights they have under Minnesota law as a resident of a manufactured park, or providing false or misleading information to the residents.
10. At the hearing, Shady Lane Court advised the Court that agreement had been reached with Portland Park regarding the plaintiffs' request for a temporary injunction against Portland Park enjoining it from denying CHEC full access to Shady Lane Court, for the purpose of inspecting Shady Lane Court's conditions.
11. With regard to the requests for injunctive relief about which agreement has not been reached, the Court has considered five factors in determining whether to issue a temporary injunction: (1) the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief; (2) the harm to be suffered by the plaintiffs if the temporary restraint is denied as compared to that inflicted on the defendants if the injunction issues pending trial; (3) the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief; (4) the aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, state and federal; and (5) the administrative burdens involved in judicial supervision and enforcement of the temporary decree. *See Dahlberg Brothers, Inc. v. Ford Motor Company*, 272 Minn. 264, 137 N.W.2d 314, 321-322 (1965).
12. The harm to owners of manufactured homes in Shady Lane Court, if the temporary injunction sought regarding the sale is not granted, outweighs the harm caused to the defendants by the injunction.

13. The plaintiffs have demonstrated that they are likely to prevail on their claim that they have the right to purchase the property in accordance with Minn. Stat. § 327C.095, subd. 6.
14. CHEC argues that if the Court requires that the plaintiffs post a bond, it should be in an amount not greater than \$25,000.
15. Portland Park requests a bond in at least the amount of \$400,000.
16. "Before any restraining order shall be issued, except in aid of writs of execution or replevin, in harassment proceedings, in actions for dissolution of marriage or orders for protection in domestic abuse proceedings, or in any other case exempted by law, *the applicant shall give a bond in the penal sum of at least \$2,000*, executed by the applicant or by some person for the applicant as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as the restrained person shall sustain by reason of the order, if the court finally decides that the applicant was not entitled thereto." Minn. Gen. R. Prac. 135 (emphasis added).

ORDER

1. Based on all of the files, records and proceedings herein, the plaintiffs' motion for a temporary injunction is granted, in part.
2. Until further order of the Court, Portland Park L.L.P. and Portland Commons LLC, are prohibited from closing on the sale of Shady Lane Court.
3. Until further order of the Court, Portland Park L.L.P., is prohibited from taking any steps to close Shady Lane Court or to relocate residents.
4. The plaintiffs' request that the Court toll the nine-month closure period is reserved.
5. The plaintiffs shall post a bond in the minimum amount of \$2,000, pending further order of the Court.
6. Counsel for the parties shall appear before the undersigned for a settlement/pretrial conference on September 27, 2005, at 10:00 a.m. Attendance at the scheduled conference is mandatory and shall be attended by attorneys who will try this matter. Parties involved in the litigation, who have authority to settle the case, must either appear or be available to their counsel by telephone during the conference.

Dated: September 13, 2005



The Honorable Heidi S. Schellhas
Judge of District Court