SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ORIGINAL FILED

MAY 12 2011

LOS ANGELES SUPERIOR COURT

COUNTY OF LOS ANGELES **Plaintiff**	)
vs	)
ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE, ET AL **Defendants**	)

CASE NO. BC457089

COURT'S RULING ON ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION HEARD ON MAY 12, 2011

Plaintiff seeks to enjoin Defendants from operating or permitting to operate a medical marijuana dispensary and/or processing, offering, selling, giving away, or otherwise dispensing marijuana at or from the dispensary located at 20050 E. Arrow Highway, in unincorporated Covina, California, and from any other location within the unincorporated areas of Los Angeles County.

Statement of the Case

Plaintiff County of Los Angeles enacted an ordinance in late 2010, effective January 6, 2011, which states that medical marijuana dispensaries which distribute, transmit, give, or otherwise provide marijuana to any person, are prohibited in all zones in unincorporated Los Angeles County. LACC section 22.56.196(B). Plaintiff seeks to enforce the ordinance against Defendants Alternative Medicinal Cannabis Collective *et al.* at the property at issue who are operating a medical marijuana dispensary ("MMD").

Zoning Enforcement Officer Hani Sabboubeh inspected the subject property on February 10, 2011 and determined that the MMD was continuing to operate. (Sabboubeh Decl., ¶¶ 11, 12, Exh. 8). He posted a Notice of Violation on the door which stated that an MMD was not a permitted use under the recently effective ordinance. (Id.). On at least two occasions subsequent to the posting of the Notice of Violations, Defendants sold marijuana to John Carrington, a licensed private investigator. (Carrington Decl., ¶¶ 3, 4, 7, 8, 9, 16, 18).

Procedural History

The complaint was filed on March 11, 2011 seeking injunctive and declaratory relief to abate a public nuisance and violations of the Los Angeles County Code. On March 17, 2011,[1] Judge Chalfant in Department 85 denied Plaintiff's *ex parte* application for a temporary restraining order but set a show cause hearing re preliminary injunction for April 19, 2011. A notice of related cases was filed on March 30, 2011 by Plaintiff with respect to case number BC 456627, which was filed on March 7, 2011.

Defendants filed a timely challenge under Code of Civil Procedure section 170.6 and, on April 6, 2011, the hearing was advanced and vacated and the case was transferred to Department 86. On April 11, 2011, the parties stipulated to set the hearing re preliminary injunction on May 10, 2011. Defendants filed their answer on April 25, 2011.

Defendants filed their opposition on April 6, 2011, a request for judicial notice on April 8, 2011[2] and objections to Plaintiff's evidence on April 27, 2011.[3] Plaintiff filed a reply

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[1] Plaintiff requests that the Court take judicial notice of (1) the excerpts from the Los Angeles County Code; (2) a certified copy of Ordinance No. 2010-0062 prohibiting marijuana dispensaries in all zones in the Los Angeles County, adopted by the County Board of Supervisors on December 7, 2010 (effective on January 6, 2011); (3) a certified copy of the grant deed showing Ying Separate Property Trusts as the owners of the property from which the medical marijuana dispensary is being operated by Defendants; (4) the printout from the California Secretary of State's website showing the existence of a business entity by the name of Alternative Medicinal Cannabis Collective; and (5) the records of the matter re County of Los Angeles v. Southern California Herbal Network, et al., filed on April 23, 2009, case number KC 055545. The Court declines to take judicial notice of item (4) as it is inadmissible hearsay. But the Court grants Plaintiff's other requests pursuant to Evidence Code section 452, subsections (a), (b), (d) and (h), and section 453.

[2] Defendants request that the Court take judicial notice of two unpublished Court of Appeal orders dated March 2, 2011 and March 1, 2011 and the docket for the unpublished case, City of Lake Forest v. Independent Collective of Orange County. The Court denies Defendants' request as these unpublished documents are not precedent. Plaintiff's objections to Defendants' request for judicial notice are sustained.

[3] On April 27, 2011, Defendants filed objections to Plaintiff's evidence. However, Defendants failed to follow California Rules of Court, rule 3.1354 regarding proper format in drafting and submitting their objections to Plaintiff's evidence, and, therefore, the Court could decline to consider them. However, the Court has considered the objections and renders the following rulings: (1) general objection to the declarations of Bishop, Carrington, Faria, Gaumer, Marchello, Fitchew, Bancroft and Regan on the basis of hearsay - overruled as Defendants fail to "quote or set forth the objectionable statement or material," as required under California Rules of Court, rule 3.1354; (2) general objections to the declarations of Bishop, Faria, Marchello, Fitchew, Bancroft and Regan on the basis that they are irrelevant – overruled as the declarations tend to prove Defendants are engaging in the sale and manufacture of marijuana and as such, the declarations are relevant; (3) objections to the declaration of Gaumer - ¶ 6 sustained; ¶ 5 overruled; (4) objections to the declaration of McMahon - ¶ 3 sustained; (5) objections to the declaration of Schneider on the basis that it is irrelevant – overruled as it tends to show the variety of customers at the MMD; (6) objections to the declaration of Lafferty on the basis that it is an opinion without proper foundation, based on hearsay and lacking in personal knowledge – sustained; although Plaintiff submitted a supplemental declaration of Lafferty qualifying her as an expert in the area of zoning and land use, Lafferty testifies on subjects not squarely within the area of zoning and land use; further Lafferty's testimony is not based on matters observed or personally known to her or made known to her at or before trial; finally, Lafferty relies on hearsay that is neither necessary nor reliable; (7) objections to the declaration of Hendricks on the basis that it is irrelevant – overruled as it tends to prove the proximity of the MMD to nearby schools; (8) objections to the declaration of Carrington on the basis that it is irrelevant - overruled as the declarations tend to prove Defendants are engaging in the sale and manufacture of marijuana and as such, the

on April 26, 2011. Plaintiff filed a response to Defendants' objections to Plaintiff's evidence and filed supplemental declarations of Jeff Bishop, Michael Regan, and Karen Lafferty on May 4, 2011.[4]

Summary of Applicable Law

The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits. Major v. Miraverde Homeowners Ass'n., 7 Cal. App. 4th 618, 623 (1992). A plaintiff seeking injunctive relief must show the absence of an adequate damages remedy at law. Code Civ. Pro. §526(4). In determining whether to issue a preliminary injunction, the trial court is (1) to consider the likelihood that the plaintiff will prevail on the merits at trial, and (2) to weigh the interim harm to the plaintiff if the injunction is denied against the harm to the defendant if the injunction is granted. King v. Meese, 43 Cal. 3d 1217, 1226 (1987).

"Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant." IT Corporation v. County of Imperial, 35 Cal. 3d 63, 72 (1983). "If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties." Id.

"Once the defendant has made such a showing, an injunction should issue only if – after consideration of both (1) the degree of certainty of the outcome on the merits, and (2) the consequences to each of the parties of granting or denying the interim relief – the trial court concludes that an injunction is proper." Id. "At this stage of the analysis, no hard and fast rule dictates which consideration must be accorded greater weight . . ." Id.

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. *See* Code Civ. Pro. §529(a); City of South San Francisco v. Cypress Lawn

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declarations are relevant; and (9) declaration of Regan on the bases that it is irrelevant, that the news stories cited therein are hearsay and it is an opinion without proper foundation, based on hearsay and lacking in personal knowledge – Plaintiff submitted an additional declaration sufficient to qualify Regan as an expert in MMDs; to the extent Regan's declaration is based on personal research and experience with respect to MMDs, Defendants' objections are overruled; ¶ 8 consists of links to various websites and are hearsay that does not fall under the expert testimony exception and thus Defendants' objections thereto are sustained. The Court declines to consider any of Defendants' objections improperly raised in their memorandum of points and authorities in opposition. Public Utilities Com'n v. Superior Court, 181 Cal. App. 4th 364 (2010).

[4] Plaintiff also filed objections to Defendants' evidence on May 4, 2011. Although Plaintiff failed to follow California Rules of Court, rule 3.1354 in drafting and submitting its objections to Defendants' evidence, the Court rules on such objections as follows: Plaintiff's objection to the declarations of the Lockhart declaration and the attached declarations of Alternative Medicinal Cannabis Collective members is overruled.

Cemetery Assn., 11 Cal. App. 4th 916, 920 (1992). However, public entities seeking a preliminary injunction are not required to post a bond or otherwise under Code of Civil Procedure section 529(b)(3).

Analysis

As a preliminary matter, under King and IT Corporation, *supra*, the Court must determine whether the provision Plaintiff is seeking to enforce specifically provides for injunctive relief. The Court finds that it does. Los Angeles County Code ("LACC") section 22.60.350, under which Plaintiff is bringing this action, states that any use of property contrary to the provisions of the zoning code is a public nuisance and authorizes Plaintiff's legal representative to commence a legal action for abatement and related injunctive relief. Therefore, Plaintiff need only show that it is "reasonably probable" that it will prevail on the merits and, if so, the rebuttable presumption applies.

Plaintiff argues that it is reasonably probable that it will prevail on the merits because Defendants' operation of a medical marijuana dispensary is in violation of its zoning code, LACC section 22.56.196(B). This section states that "medical marijuana dispensaries which distribute, transmit, give, or otherwise provide marijuana to any person, are prohibited in all zones in the County," effective as of January 6, 2011. County of Los Angeles v. Martin Hill, 192 Cal. App. 4th 861, 866, fn.4 (2011).

As evidence, Plaintiff provides the declaration of Zoning Enforcement Officer Sabboubeh who inspected the subject property on February 10, 2011 and determined that the MMD was continuing to operate. (Sabboubeh Decl., ¶¶ 11, 12, Exh. 8). He posted a Notice of Violation on the door, which stated that an MMD was not a permitted use under the recently effective ordinance. (Id.). Additionally, on at least two occasions subsequent to the posting of the Notice of Violations, Defendants sold marijuana to John Carrington, a licensed private investigator. (Carrington Decl., ¶¶ 3, 4, 7, 8, 9, 16, 18).

Additionally, Defendants' own evidence corroborates that of Plaintiff. Defendants readily admit that they sell marijuana. (E. Andresen Decl.; K. Hill Decl.; M. Hill Decl.; Gaut Decl.; Lockhart Decl.). And, Defendants fail to argue or present any evidence that contradicts Plaintiff's assertions. Based on the evidence, Plaintiff has clearly established that Defendants are violating LACC section 22.56.196(B).

Although Defendants do not dispute this, they argue that LACC section 22.56.196(B) is unconstitutional and conflicts with the Compassionate Use Act ("CUA") and the Medical Marijuana Program ("MMP") and, thus, violates Health and Safety Code section 11362.83.

Defendants' claim that the LACC section at issue is unconstitutional is essentially the same argument they make with respect to the section's violation of Health and Safety Code section 11362.83 – *i.e.*, that it is unconstitutional because it conflicts with state law. As such, Defendants' claims will not be discussed separately.

Plaintiff has the power to regulate MMDs through its police powers under the California Constitution and the California Health and Safety Code. *See*, Cal. Const. art. XI, § 7; H & S Code §§ 11362.5, 11362.83, 11362.768 and 11571.1(a). Further, Plaintiff has the power to regulate MMDs through the adoption and enforcement of zoning and land use laws. *See*, City of Corona v. Naulls, 166 Cal. App. 4th 418 (2008), *and* City of Claremont v. Kruse, 177 Cal. App. 4th 1153 (2009).

Health and Safety Code section 11362.83, a part of the MMP, specifically states, "[n]othing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article." "Thus, section 11362.83 allows a county to regulate the establishment of MMDs and their locations so long as those regulations are consistent with the provisions of the [MMP], sections 11362.7 through 11362.9." County of Los Angeles v. Martin Hill, 192 Cal. App. 4th 861, 867 (2011).

Health and Safety Code sections 11362.7 through 11362.9 (where the CUA and MMP are codified) provide limited criminal defenses from prosecution for cultivation, possession, possession for sale, transportation and certain other criminal sanctions involving marijuana for qualified patients, persons with valid identification cards and designated primary caregivers of the foregoing. Health & Safety Code §§ 11362.5, 11362.775. These sections do not provide that anyone has the right to establish an MMD nor do they establish any zoning requirements applicable to businesses that sell medical marijuana.

A local ordinance contradicts state law when it is inimical to or cannot be reconciled with state law. O'Connell v. Stockton, 41 Cal. 4th 1061, 1068 (2007)(holding that local ordinances providing different consequences than those already provided for in the Health and Safety Code are preempted).

LACC section 22.56.196(B), the ordinance at issue, is not a criminal ordinance. It neither criminalizes nor sanctions any of the activities specifically enumerated in the CUA and MMP. Further, the ordinance at issue does not provide for different consequences than those provided for in the CUA and MMP. The ordinance is merely a zoning restriction and has no impact on the criminal defenses provided by the CUA and MMP. Moreover, the Court of Appeal has specified that, "[t]he statute does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose," instead finding that the County has "authority to regulate the particular manner and location in which a business may operate" under the Constitution. County of Los Angeles v. Martin Hill, *supra*, 192 Cal. App. 4th at 890.

Because the ordinance does not change or affect the criminal defenses established under the CUA and MMP,[5] it is not in conflict with them under O'Connell. And, it is easily

[5] At oral argument, Defendants argued that Health and Safety Code section 11362.765 provides an exemption from Health and Safety Code section 11570, the provision wherein is found the definition of "nuisance" relating to the unlawful selling, serving, storing, keeping, manufacturing, or giving away of any controlled substance. However, section 11362.765 specifically applies to exempt such activities, to the extent they are in compliance with the CUA and MMP, from *criminal liability* under section 11570. This is consistent with the other limited criminal defenses established under CUA and MMP. Plaintiff is seeking an injunction to enforce a civil statute, not a criminal one, and Plaintiff's power to enjoin and/or abate a

reconciled with state law because regulation of the manner and location in which a type of business may operate is permitted under County of Los Angeles v. Martin Hill, *supra*. As a result, the ordinance neither violates Health and Safety Code section 11362.83 nor is it unconstitutional. Therefore, the Court finds that it is reasonably probable that Plaintiff will succeed on the merits of its claims.

Because Plaintiff, a governmental entity, established that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant. *See*, IT Corporation, *supra*. As a result, Defendants must show that they would suffer grave or irreparable harm from the issuance of the preliminary injunction before the Court examines the relative actual harms to the parties.

Defendants argue that being subjected "to a facially unconstitutional requirement as a condition to the continued operation of their business is a far more serious consequence to [Defendants] than is the consequence to [Plaintiff] of not being able to impose a new CUP requirement." Vo v. City of Garden Grove, 115 Cal. App. 4th 425, 438 (2004). The Court has determined, however, that the ordinance at issue is not unconstitutional as argued by Defendants and therefore, this argument also fails. As a result, Defendants have not met their burden of showing that they would suffer grave or irreparable harm from the issuance of the preliminary injunction, which is needed to rebut the presumption that the potential harm to the public outweighs the potential harm to Defendants under IT Corporation, *supra*.

Conclusion

Based on the foregoing, Plaintiff's request for a preliminary injunction is granted. No bond is necessary under Code of Civil Procedure section 529(b)(3).

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nuisance civilly under section 11571 is unaffected by the CUA and MMP provisions. Moreover, section 11571.1(a) specifically provides that local governing bodies are not prevented from adopting and enforcing laws relating to drug abatement.