

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 23-2851 H

TRUSTEES OF THE PRIVATE RESIDENCES AT ONE)
DALTON CONDOMINIUM,)
Plaintiffs)
vs.)
))
JIACHENG SUN)
Defendant)

JOHN E. FOWERS III
 ACTING CLERK MAGISTRATE
 2023 DEC 15 P 12:03
 SUFFOLK SUPERIOR COURT
 CIVIL CLERK'S OFFICE

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

The Plaintiffs, as they are the Trustees of the Private Residences at One Dalton Condominium, ("Plaintiffs" or "Condominium Trust"), submit this Memorandum of Law in Support of their Motion for Preliminary Injunction.

As grounds therefore, the Condominium Trust submits that the Defendant, Jaicheng Sun ("Defendant" or "Sun") continues to act in direct breach and violation of the applicable terms and provisions appear within G.L. c. 183A, and within the governing documents for the Private Residences at One Dalton Condominium, despite numerous prior demands having been made, and in spite of the material and deleterious impact that Sun's action and conduct are having on the residents and occupants, and the damages and irreparable harm being suffered therefrom.

As the Condominium Trust, along with the Condominium's other Unit Owners, residents and occupants are without adequate remedy of law after their efforts to impose fines in accordance with Chapter 183A were ignored by Sun, Plaintiffs will suffer further irreparable harm in the absence of the requested injunctive relief being issued. Accordingly, request is hereby made that the Plaintiff's Motion for Preliminary Injunction be allowed.

ARGUMENT

I. Standard of Review for Issuance of a Preliminary Injunction.

The standard for the issuance of a preliminary injunction is well known. It requires a showing of immediate and irreparable harm; a balancing of the harm to each party; a reasonable likelihood of success on the merits; and a consideration of the public interests. Nolan, 31 *Massachusetts Practice Series, Equitable Remedies* Sec. 129; *Commonwealth v. Mass. CRINC*, 392 Mass. 79 (1984); *Alexander and Alexander, Inc. v Danahy*, 21 Mass. App. 488 (1986). Before any analysis is made as to a balancing of the relative harms and of the public interest, the Court must first conclude that the moving party enjoys a reasonable likelihood of success on the merits and will suffer irreparable harm in absence of the requested relief.

Assuming the Court finds a reasonable likelihood of success on the merits and that the threat of immediate and irreparable injury exists, the Court must then balance the respective harms to the parties if the requested relief is granted. *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 616-17 (1980). The threatened injury to the moving party must outweigh the harm the order would cause the opposing parties. While all four factors are required, they are interrelated, and the Court must consider them together; the strength of one factor may offset the weakness of another. *McLaughlin by McLaughlin v. Boston School Committee*, 938 F.Supp. 1001 (D.Mass. 1996).

II. The Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

All Unit owners are bound by the terms of the Condominium's Master Deed and By-Laws. Pursuant to Article 1 Section 5 of the Condominium By-Laws:

The terms and provisions of this instrument, as may be amended from time to time in accordance with the terms and provisions of this instrument, shall constitute the By-Laws of the Condominium Association ("By-Laws"). The terms and provisions of these By-Laws shall apply to the Condominium and the use and occupancy

thereof. All present and future Unit Owners, mortgagees, lessees, sublessees and other occupants of the Units and guests of Unit Owners, and any other Persons who may use, operate, or maintain the facilities of the Condominium (including, without limitation, any portion of the Common Elements) are and shall be subject to the Condominium Documents and the Primary Condominium Documents.

The acceptance of a deed, mortgage or lease or the act of occupancy of any portion of the Condominium (including any Unit or any portion of the Common Elements), shall constitute an agreement by such owner, mortgagee, lessee, occupant or invitee that the Condominium Documents and the Primary Condominium Documents are accepted, ratified and are fully binding up and enforceable against such Person.

(See By-Laws attached to the Plaintiff's Complaint and Request for Injunctive Relief as **Exhibit "B"**.)

The Master Deed provides further restriction upon the Unit Owner as to what may, or may not, be done within the units. For example, Section 8(g) of the Condominium's Master Deed specifies:

In keeping with the operation of the Condominium as a world-class facility, no Unit Owner shall cause or permit to exist in any portion of its Unit or the Condominium, any nuisance, excessive or offensive noise, odor or fumes, or any condition reasonably likely to prove hazardous to health or in violation of any Legal Requirements, Rules and Regulations. For the purposes of this Section, the decision of the Board as to what constitutes a nuisance shall be binding on the Unit Owners.

(See Master Deed attached to the Plaintiff's Complaint and Request for Injunctive Relief as **Exhibit "A"**.)

Further, the Rules and Regulations of the Condominium expound upon the requirements made upon Unit Owner under the Master Deed and Declaration of Trust. Rule 9 of the rules and regulations requires that:

No Unit Owner shall make or permit any disturbing noises in the Building or do or permit anything which will interfere with the rights, comforts or conveniences of other. The volume of any radio, television, sound system, musical instruments or other sound producing device shall be sufficiently reduced at all times so as not to disturb other occupants.

(See By-Laws, attached to the Plaintiff's Complaint and Request for Injunctive Relief as **Exhibit "B"**.)

Pursuant to the foregoing, the Condominium's governing documents make it abundantly clear that Defendant has a legal duty and obligation to comply with applicable terms and provisions contained therein, at all times, and in all respects. The governing documents prohibit an owner from making loud noises, causing an annoyance or disturbance, from creating a nuisance or from otherwise interfering with other residents' peaceful enjoyment of their own homes. As demonstrated in the Complaint, the Defendant has chronically violated the governing documents—over a prolonged period of time—by creating excessive noise which is destroying his adjoining neighbors' ability to peacefully reside in their own Units. More specifically, at late hours in the evening and early hours of the morning, the Defendant is shouting, having parties, having loud and audible conversations in Common elements and is generally a disturbance to his neighbors. Additionally, due to Defendant's disturbances and noise, adjoining neighbors are regularly unable to sleep at night.

In short, pursuant to the express terms of the Condominium's governing documents, the Defendant is obligated to not create a nuisance or otherwise disturb/annoy other residents through excessive noise. However, in spite of such legal obligations, the Defendant has acted direct breach and in material violation of the same, as further described herein.

1. **The Defendant's Ongoing Noise Violations**

From April 2023 through the present, the Defendant has chronically and persistently created excessive noise which has caused, and is causing, a tremendous disturbance and annoyance to adjacent unit owners. Written notices of noise violations have been provided on five separate occasions, but such violations persist. Indeed, the noise violations have occurred even more frequently after the final written Violation letter. Most reports from the neighbors are between the hours of 11:00 PM and 7:00 AM.

Given the complete lack of response to all efforts to notify the Defendant the excessive noise issue, and the deleterious effect of such noise on his neighbors, it is plainly evident that his conduct will not change regardless of whether the Defendant is cited with a violation or levied a fine under Chapter 183A. Given the Defendant's ongoing refusal to comply with the governing documents and coupled with the fact that his actions are objectively unreasonable, judicial intervention is required.

III. The Condominium Trust Will Suffer Irreparable Harm if the Motion is Denied

The Condominium Trust presents a claim upon which there is no adequate remedy at law. As noted in Noble v. Murphy, 34 Mass. App. Ct. 452 (1993), the enforcement of valid condominium restrictions maintains "the value of meeting the reasonable expectations of the...unit owners and...their right to freely associate by contract with persons of like expectations..." 34 Mass. App. Ct. at 459; See also, G.L. c. 183A, §4.

In the matter now pending before this Court, no measure of monetary damages can make the Condominium Trust whole. Nor, for that matter, can the expectations of the other Unit Owners, residents and occupants at the Condominium be fulfilled absent the issuance of an injunction. In effect, a denial of the requested preliminary injunctive relief would permit the Defendant to continue to act in direct breach and violation of the applicable terms and provisions

appearing within G.L. c. 183A and within the Condominium's governing documents, in clear and patent disregard for his duties and obligations arising thereunder, and for the rights, interests, health, safety, well-being, comforts and conveniences of the Condominium's other Unit Owners, residents and occupants, whom continue to be damaged and harm on account of the same.

The Condominium Trust, together with the Condominium's other Unit Owners, residents, and occupants, have suffered damages, prejudice and harm as a result of the Defendant's actions as stated herein, and will continue to suffer permanent and irreparable harm in the absence of injunctive relief being issued. Accordingly, the Condominium Trust respectfully requests that this Court allow its Motion for Preliminary Injunction.

IV. A Balancing of the Harms and Equities Favors Issuing the Requested Injunctive Relief.

Through its request for injunctive relief, the Condominium Trust is simply attempting to enforce the applicable terms and provisions appearing within M.G.L. c. 183A and within the Condominium's governing documents for the benefit of the entire Condominium community and to protect and preserve the Condominium, the Units, and the well-being of the Condominium's other Unit Owners, residents and occupants, as well as their rights and interests to make reasonable use and to peacefully enjoy their Units, and the Condominium as a whole, without substantial interference on the part of the Defendant.

The Defendant has no right to ignore and to act in dereliction of his duties and responsibilities arising under M.G.L. c. 183A and under the Condominium's governing documents, by continuing to create excessive noise which constitutes a nuisance and which disturbs and annoys the residents of adjoining units. Accordingly, a balancing of the harms and equities clearly favors issuing the requested injunctive relief, and the Condominium Trust respectfully requests that the Court allow its Motion for Preliminary Injunction.

V. **A Consideration of Public Interests Mandates the Issuance of the Injunction**

A consideration of the public interests and the uniform enforcement of the applicable terms and provisions of M.G.L. c. 183A, as well as the Condominium's governing documents—which exist for the benefit of the entire Condominium Association and to protect and preserve the health, safety, well-being, rights and interests of the Condominium's other residents—mandates the issuance of the requested injunctive relief.

There is no public policy consideration that favors the Defendant's ongoing failure and refusal to abide by the pertinent provisions set forth in M.G.L. c. 183A and within the Condominium's governing documents, that impose a clear and direct threat to the well-being, rights and interests of the Condominium's other Unit Owners, residents and occupants all of whom will suffer permanent irreparable harm, absent the requested injunctive relief being issued. Accordingly, the Condominium Trust requests that this Court allow its Motion for Preliminary Injunction.

CONCLUSION

For the reasons having been described herein and within the accompanying Verified Complaint and Request for Injunctive Relief, the Condominium Trust respectfully requests that this Court allow its Motion for Preliminary Injunction.

Respectfully submitted,

TRUSTEES OF THE PRIVATE RESIDENCES
AT ONE DALTON CONDOMINIUM,

By counsel.

/s/ *Gabrielle Hunter-Ensor*

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