

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

SUFFOLK, ss

MISCELLANEOUS CASE
NO. 23 MISC 000103 (RBF)

JAMES N. DECOULOS,
Plaintiff,

v.

TOPSFIELD ZONING BOARD OF APPEALS,
ROBERT MORIARTY, DAVID MERRILL, JODY
CLINEFF, GREGOR SMITH, DAVID MONIZ, as)
they are members of the Topsfield Zoning Board of)
Appeals, and KEVIN J. GUINEE, Trustee of the)
Rowley Bridge Road Realty Trust, CONNEMARA)
HOUSE FARM, LLC,)
Defendants.)

PRELIMINARY INJUNCTION

Introduction

In his Complaint filed on March 23, 2023 (Complaint), plaintiff James N. Decoulos (Decoulos) brought an action under G.L. c. 40A, §17 (§17), naming as defendants the Topsfield Zoning Board of Appeals (ZBA) and individuals in their capacity as members of the ZBA, and Kevin J. Guinee as trustee of the Rowley Bridge Road Trust and Connemara House Farm LLC (collectively, Connemara Farm). The Complaint is an appeal of the decision of the ZBA filed with the Topsfield Town Clerk on February 21, 2023, overturning the decision of the Topsfield Building Inspector's denial of Decoulos's zoning enforcement complaint to prohibit Connemara Farm from operating a conference and event facility at 252 Rowley Bridge Road (Connemara property) without a special permit (ZBA Decision). Decoulos appeals so much of the ZBA

Decision that stayed enforcement of the Topsfield Zoning Bylaw (bylaw). On March 28, 2023, Decoulos filed Plaintiff's Motion for Preliminary Injunction (PI motion).

In the PI motion, Decoulos seeks a preliminary injunction enjoining Connemara Farm from operating the conference and event facility (specifically, as a venue for weddings and private events) without a special permit issued in accordance with the bylaw. In the alternative, Decoulos seeks a preliminary injunction enjoining Connemara Farm from emitting noise of a sound level that exceeds that specified in the bylaw, specifically ZA:3.7 Nuisances of the Topsfield Zoning Guidelines and Performance Standards (guidelines). A hearing was held on May 11, 2023, and the PI motion was taken under advisement. For the reasons and on the conditions set forth below, the PI motion is **ALLOWED IN PART**.

Discussion

Generally, a preliminary injunction may issue only if the moving party, Decoulos, demonstrates (a) a likelihood of success on the merits, (b) that he faces a substantial risk of irreparable harm if the injunction is not issued, and (c) that this risk of irreparable harm outweighs any risk of irreparable harm which granting the injunction would create for Connemara Farm. *GTE Prods. Corp. v. Stewart*, 414 Mass. 721, 722-723 (1993); *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Decoulos owns and resides at 226 Rowley Bridge Road in Topsfield (the Decoulos property). Compl. ¶ 2. Connemara Farm is located on approximately 12 acres at 252 Rowley Bridge Road in Topsfield (the Connemara Farm property). Compl. ¶ 10, 12. The Decoulos property abuts the Connemara Farm property. Compl. ¶ 14. In or around 2021, Connemara Farm began hosting weddings and private events. Compl. ¶ 19. Decoulos is disturbed by the loud music volume that accompanies weddings and events at Connemara Farm. Compl. ¶ 22. On

November 29, 2022, Decoulos appealed the Topsfield Building Inspector's determination that Connemara Farm could conduct weddings and events on their property without a special permit to the ZBA. Compl. ¶ 31. After notice and public hearing, the ZBA overturned the Building Inspector's determination and deemed that Connemara Farm required a special permit to operate as a wedding and event venue. Compl. ¶ 34, App. at 4. The ZBA stayed enforcement of their decision for 90 days from the date of their decision to allow Connemara Farm to file a request for a special permit to operate a conference or event facility under the bylaw, and such additional time as it might take for the ZBA to render a decision on the application if filed. Compl. App. at 4. Decoulos contends that the ZBA lacks authority to stay enforcement of the bylaw.

Decoulos has demonstrated a likelihood of success on the merits sufficient to warrant issuance of a preliminary injunction. The ZBA determined that Connemara Farm's current operations violate the bylaw. Compl. App. 4. Decoulos correctly argues that the power to stay enforcement is not enumerated in the ZBA's discretionary authorities under G.L. c. 40A, § 14, nor in the bylaw. The ZBA could enforce the ZBA Decision itself, or remand to the Building Inspector to reconsider his enforcement decision in light of the ZBA Decision. Furthermore, in their Opposition to Plaintiff's Motion for Preliminary Injunction, the ZBA stated that "a special permit is likely to include conditions which would alleviate or mitigate impacts on the neighborhood...." This suggests that if the ZBA decides to grant Connemara Farm's special permit, conditions will require them to mitigate noise. In either case, whether the ZBA grants or denies the special permit, Connemara Farm will almost certainly be required to mitigate noise, and should not be allowed to continue to impair Decoulos's use and enjoyment of the Decoulos property without restriction in the interim.

It is undisputed that Decoulos has an interest in the Decoulos property. Because of the unique nature of real property, “money damages will often be inadequate to redress a deprivation of an interest in land,” and preliminary injunctions often issue to prevent such deprivation. *Greenfield Country Estates Tenants Ass’n v. Deep*, 423 Mass. 81, 88 (1996). Decoulos faces a substantial risk of irreparable harm to his interest in the Decoulos property if noise from the Connemara Farm property is not addressed and controlled. Interference with his right to quiet enjoyment of the property is “not capable of vindication by a final judgment, rendered either at law or in equity.” *Packaging Indus. Group, Inc.*, 380 Mass. at 617 n.11.

Connemara Farm disputes that Decoulos has alleged any harm, irreparable or otherwise. Opp. at 9. However, their understanding of harm is incorrect. Pursuant to authority granted by G.L. c. 111, §§ 142A – 142J, the Department of Environmental Protection (DEP) regulates “noise” as a form of air pollution. DEP defines noise as sound of sufficient intensity and/or duration as to cause or contribute to a condition of air pollution. 310 CMR 7.00. In the noise context, “[a]ir pollution means the presence in the ambient air space of [noise] in such concentration[] and of such duration as to...cause a nuisance ... or ... unreasonably interfere with the comfortable enjoyment of life and property ... 310 CMR 7.00. DEP regulations provide that “[n]o person owning, leasing, or controlling a source of sound shall willfully, negligently, or through failure to provide necessary equipment, service, or maintenance or to take necessary precautions cause, suffer, allow, or permit unnecessary emissions from said source of sound that may cause noise.” 310 CMR 7.10(1). DEP further states that the preceding regulation “shall pertain to, but shall not be limited to ... suppressible and preventable ... commercial sources of sound, and other man-made sounds that cause noise.” 310 CMR 7.10(2). These regulations are universal in Massachusetts, and apply to Connemara Farm in spite of their contention that

Topsfield “has no noise bylaw.” Opp. at 7. Decoulos has sufficiently alleged activities by Connemara Farm depriving him of his interest in Decoulos property, by inundating the Decoulos property with wedding music, that, if continued, could not be redressed by a decision in his favor after adjudication of the merits.

Decoulos’s irreparable harm must be balanced against that of Connemara Farm, which has also demonstrated that they may suffer irreparable harm if an injunction removes the stay on the ZBA’s decision and thereby entirely prevents them from conducting weddings and events for the pendency of their special permit application. Connemara Farm has 34 wedding events booked for the 2023 season, 13 of which are scheduled before the anticipated ZBA decision date on their special permit application. Opp. at 9. Connemara Farm contends that if the preliminary injunction is allowed they will suffer economic harm, reputational harm, and be exposed to risk of litigation. Opp. at 9. Economic loss alone does not generally constitute irreparable harm for the purpose of preliminary injunction. *Packaging Indus. Group, Inc.*, 380 Mass. at 621. However, the damage dealt to Connemara Farm’s reputation by being ordered to cancel several weddings scheduled many months in advance on extremely short notice could undermine trust in the venue by current and potential customers and constitutes irreparable harm. Moreover, and more important, the cancelling of weddings would cause harm to the innocent third-party betrothed and their family and friends. The court need not, and does not, enjoin Connemara Farm from conducting weddings entirely; a reduction in noise will address Decoulos’s irreparable harm with limited impact on Connemara Farm’s operations for the pendency of their application for special permit.

The question is how best to order noise from Connemara Farm reduced. The best course is to order Connemara Farm to comply with the DEP noise regulations referred to above, at least

until the ZBA directs otherwise as a condition of a special permit. The first issue, then, is just how loud is the noise, and does it exceed the DEP regulations. Noise in violation of 310 CMR 7.10 includes any sound that increases broadband sound level by more than 10 decibels (dB) above ambient as measured at the boundary. DEP Policy 90-001 (Jan. 16, 1990). Connemara Farm will be ordered to conduct a sound study of both the ambient sound and the sound from its events at the border with the Decoulos property, and provide an affidavit report to the court so that it can enter a further order based on the results of the study.

In summary, because Decoulos has demonstrated a sufficient likelihood of success on the merits and a substantial risk of irreparable harm, and because the risk of harm to Connemara Farm if they are enjoined from producing noise that impacts the Decoulos property does not outweigh the irreparable harm to Decoulos, issuance of a preliminary injunction is proper.

Conclusion

For the foregoing reasons, until further order of the court, Connemara Farm and their employees, tenants, agents, contractors, licensees, or invitees are hereby **ORDERED** to commission a sound study, to be completed within 14 days of the date of this Preliminary Injunction, and submit an affidavit by a sound engineer, to be submitted to the court within seven days after the completion of the sound study, measuring the ambient broadband sound level and the broadband sound level of wedding activities at Connemara Farm, as measured at the shared boundary between the Decoulos property and the Connemara Farm property. Upon receipt of the affidavit, the court will enter a further order limiting the noise from Connemara Farm to a level at or below an increase of broadband sound level of 10 decibels (dB) above ambient as measured at the shared boundary between the Decoulos property and the Connemara Farm property.

As it appears that Connemara Farm will have suffered no harm if this order is subsequently lifted, no bond is required.

The findings and rulings contained herein are necessarily preliminary in nature. Thus, these findings and rulings are neither intended, nor should they be construed, as having any precedential weight or effect in further proceedings in this case, all of which shall be determined in the light of the evidence offered and admitted on those occasions. Should further-developed evidence or circumstances warrant, any party may move for the modification or dissolution of this order at any time.

SO ORDERED.

By the Court (Foster, J.) /s/ Robert B. Foster

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson, Recorder

Dated: May 19, 2023