

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
STATE OF MISSOURI

MARK E. GAVAN,

Plaintiff,

v.

AUTUMN LAKES
CONDOMINIUM, et al.,

Defendants.

Cause No.: 25SL-CC02013

Division: 14

**DEFENDANTS AUTUMN LAKES CONDOMINIUM AND AUTUMN LAKES
ASSOCIATION'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION
AND PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND PERMANENT INJUNCTION**

COME NOW Defendants Autumn Lakes Condominium and Autumn Lakes Association (collectively, the "Defendants"), by and through undersigned counsel, and for their Response in Opposition to Plaintiff Mark E. Gavan's ("Plaintiff") Motion for Entry of Temporary Restraining Order Ex Parte ("Motion") and Verified Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction ("Petition"), state as follows:

INTRODUCTION

Autumn Lakes is a subdivision located in St. Louis County, Missouri (the "Subdivision"), which is comprised of both single-family homes and condominium units. The Subdivision is administered by a master association, Autumn Lakes Association (the "Master Association"). The Master Association is a private nonprofit corporation organized under Mo. Rev. Stat. § 355 and operates pursuant to Declaration of Covenants,

Conditions and Restrictions and By-Laws for Autumn Lakes Association, recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri on August 11, 1980 in Book 7267, Page 978 (the “Master Declaration”).

Autumn Lakes Condominium (the “Condominium”) is a condominium association organized pursuant to Mo. Rev. Stat. §§448.005 to 448.210 of the Missouri Condominium Property Act (the “MCPA”) and the Autumn Lakes Condominium Declaration of Condominium and By-Laws recorded on March 27, 1981 in Book 7320, Page 435 of the records of the County of St. Louis, Missouri, as amended (the “Condominium Declaration,” and together with the Master Declaration, the “Declarations”).

Plaintiff owns the condominium unit located within the Subdivision, and is a member of the Condominium and Master Association.

On or about August 18, 2025, the Master Association and the Condominium, by and through their boards and pursuant to the Declarations, mailed proposed amendments to the Declarations (the “Proposed Amendments”) with written ballots to all owners. On September 2, 2025, after more than two weeks had passed, Plaintiff filed the Petition¹ and Motion seeking to enjoin Defendants from “from opening, counting, or certifying any ballots concerning the [P]roposed [A]mendments through and including September 8, 2025.” (Pet., p. 2).

¹ For the purposes of this Opposition, Defendants consider the Petition as a Motion for a Temporary Restraining Order under Rule 92.02(a) and the Motion as requested under Rule 92.02(b). To the extent the Petition is an attempt to amend or further add to his Amended Petition, it has been filed without request for leave of the Court as required under the Rules and should therefore be considered void.

As further discussed below, Plaintiff's claims do not warrant the emergency relief that he is now seeking. Plaintiff's concerns with the Proposed Amendments (as hereinafter denied) are mere conclusory allegations largely unsupported by fact. And it is unmistakably clear: instead of seeking to maintain the status quo, Plaintiff is seeking to circumvent Defendants' internal democratic processes and disregard the operative and controlling documents at issue in this matter. The relief Plaintiff seeks, to which he is unquestionably not entitled, not only harms Defendants, but would also severely prejudice the rights of other owners in the Subdivision.

STANDARD

"[I]njunctive relief is discretionary and does not issue as a matter of right." *Vikings, USA Bootheel Mo. v. Modern Day Veterans*, 33 S.W.3d 709, 711 (Mo. App. S.D. 2000). Moreover, "[i]njunctive relief is a harsh remedy to be used sparingly and only in clear cases." *Id.*; see also *Cissell v. Brostron*, 395 S.W.2d 322, 325 (Mo. Ct. App. 1965); *Coursen v. City of Sarcoxie*, 124 S.W.3d 492, 499 (Mo. App. S.D. 2004). The burden of proof is on the plaintiff seeking injunctive relief, and the burden of proof to obtain a mandatory injunction is enhanced, requiring clear proof. See *Supermarket Merchandising & Supply, Inc. v. Marschuetz*, 196 S.W.3d 581 (Mo. App. E.D. 2006); *Community Title Co. v. Roosevelt Federal Sav. & Loan Ass'n*, 670 S.W.2d 895 (Mo. App. E.D. 1984).

"An indispensable requirement for obtaining injunctive relief is the wrongful and injurious invasion of some legal right." *State ex rel. Gardner v. Stelzer*, 568 S.W.3d 48, 51 (Mo. App. E.D. 2019) (citing *Camden County ex rel. Camden County Com'n v. Lake of Ozarks Council of Local Governments*, 282 S.W.3d 850, 858 (Mo. App. S.D. 2009)). In

addition, “[t]he court shall not grant a temporary restraining order unless the party seeking relief demonstrates that immediate and irreparable injury, loss, or damage will result in the absence of relief.” Rule 92.02(a). Further, the party seeking injunctive relief must have no adequate remedy at law. *Suppes v. Curators of Univ. of Missouri*, 613 S.W.3d 836, 847 (Mo. App. W.D. 2020), *transfer denied* (Jan. 26, 2021).

“The sole purpose of a restraining order is to preserve the status quo” and it is only appropriate “when it appears the defendant will commit some act during the litigation producing injury to the plaintiff.” See *Worlledge v. City of Greenwood*, 627 S.W.2d 328, 330 (Mo. App. W.D. 1982). The same is true for a preliminary injunction. *State ex rel. Myers Mem’l Airport Comm., Inc. v. City of Carthage*, 951 S.W.2d 347, 352 (Mo. App. S.D. 1997) (“[T]he purpose of a preliminary injunction is to preserve the status quo until the trial court adjudicates the merits of the claim for a permanent injunction.”).

In determining whether temporary injunctive relief should be issued, the Court should “consider all of the factors customarily considered in connection with motions for preliminary injunctive relief.” *Furniture Mfg. Corp. v. Joseph*, 900 S.W.2d 642, 648 (Mo. App. W.D. 1995).

In considering a motion for preliminary injunction or temporary restraining order, a court should weigh “[1] the movant’s probability of success on the merits, [2] the threat of irreparable harm to the movant absent the injunction, [3] the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties, and [4] the public interest.” *State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo.

banc 1996). “A petitioner must make some showing of probability of success on the merits before a preliminary injunction will be issued.” *Id.*

ARGUMENT

I. Plaintiff’s Petition Fails on its Face for Lack of Verification.

Pursuant to Missouri Supreme Court Rule 92.02(a)(2), “A party seeking a temporary restraining order shall support that request with a verified petition or affidavit reciting the specific facts that support the showing required by Rule 92.02(a).” Mo. Sup. Ct. R. 92.02(a). Black’s Law Dictionary defines “verification” to mean: “A formal declaration made in the presence of an authorized officer, such as a notary public, or . . . under oath but not in the presence of such an officer, whereby one swears to the truth of the statements in the document.” Black’s Law Dictionary (12th ed. 2024).

Here, the only proof provided by Plaintiff in support of his motion for temporary restraining order was his Petition. Despite its title, however, the Petition is not verified because Plaintiff’s verification was not properly notarized. *See* Pet., p. 4. Thus, on this ground alone, Plaintiff’s Petition and the allegations therein are entirely insufficient to support the proof required by Rule 92.02(a)(2). As such, the Rules require that the Court deny Plaintiff’s request that it enter a Temporary Restraining Order (“TRO”).

II. Plaintiff Cannot Demonstrate Immediate Irreparable Harm and has an Adequate Remedy at Law.

In support of his Motion, Plaintiff argues that the Proposed Amendments are “unlawful[,]” “ultra vires and void,” and “unreasonable and unenforceable,” and if adopted by Defendants, “will irreparably harm Plaintiff” and “injunctive relief is the only adequate

remedy.” (Pet. ¶¶ 4-5, 9-11, 13-14). Plaintiff, however, has failed to come forward with a real injury and demonstrate that he would have no adequate remedy at law. *See Commission Row Club v. Lambert*, 161 S.W.2d 732, 736 (Mo. Ct. App. 1942) (“the injury must be real, not imaginary.”)

Under Missouri law, “[i]rreparable harm is established if monetary damages cannot provide adequate compensation for improper conduct. *Walker v. Hanke*, 992 S.W.2d 925, 933 (Mo. App. W.D. 1999). “The term ‘adequate remedy at law’ generally means that damages will not adequately compensate the plaintiff for the injury or threatened injury. . . .” *Id.* Missouri courts do not generally enjoin improper conduct whether the party seeking relief “has an adequate remedy at law by way of damages, such as in a case requiring payment of a debt.” *Id.*; *see also Beauchamp v. Monarch Fire Prot. Dist.*, 471 S.W.3d 805, 812-13 (Mo. App. E.D. 2015) (party had adequate remedy at law because they could assert breach of contract).

Take, for example, the case *Smith v. City of St. Louis*, 409 S.W.3d 404, 413-14 (Mo. App. E.D. 2013). In *Smith*, the plaintiff sought a permanent injunction against enforcement of an ordinance regulating red light cameras in the City of St. Louis after receiving a ticket. *Id.* at 407. The trial court, however, dismissed the plaintiff’s request for a permanent injunction and entered summary judgment in favor of the City of St. Louis, following which the plaintiff appealed. In upholding the trial court’s rulings, the Court of Appeals began by noting that an injunction was an equitable remedy, which meant that relief to plaintiff would only be warranted where the legal remedies available to her were inadequate or incomplete. *Id.* at 413. The Court also noted that to be entitled to seek and

receive equitable relief, one must plead facts which show they lack an adequate remedy at law. *Id.* at 413-14. The Court then highlighted and found significant the fact that the plaintiff had a pending municipal court hearing with respect to the ticket she had received wherein she could “assert whatever defenses she [chose].” *Id.* at 414. In light of this, the Court found the plaintiff had an adequate remedy at law in the form of her municipal court hearing, which, the Court noted, “[was] the forum in which she must raise all of her claims.” *Id.* at 415.

The instant case is not all that dissimilar from *Smith* in that, here, along with his Motion and Petition, Plaintiff already has a separate Amended Petition filed against Defendants seeking/alleging specific performance, breach of contract, violation of the Missouri Merchandising Practices Act, among other things. This is the forum in which Plaintiff’s claims regarding the Proposed Amendments should be raised and subsequently determined as such claims would be part and parcel of Plaintiff’s alleged breach of contract claims in the Amended Petition. Thus, Plaintiff will not be able to explain why he has no adequate remedy at law because he has one. If Plaintiff does prevail on the merits, which, as discussed below, is unlikely, he will have a money damages claim against Defendants. For this additional reason, Plaintiff’s request for a TRO and preliminary injunction necessarily fails. “The fact that a proceeding under a theory of contractual breach may be slower than an order in equity does not make this action for damages any less adequate.” *State ex rel. Turco Development Co. v. Lasky*, 581 S.W.2d 935, 938 (Mo. App. E.D. 1979).

Further, the relief requested by the Plaintiff is that the Court enjoin Defendants from “from opening, counting, or certifying any ballots concerning the [P]roposed

[A]mendments through and including September 8, 2025.” (Pet., p. 2). He specifically notes that this would occur on September 8, 2025, a date that has since passed. “Since the purpose of an injunction is not to afford a remedy for what is past but to prevent future mischief, not being used for the purpose of punishment or to compel persons to do right but merely to prevent them from doing wrong, rights already lost and wrongs already perpetrated cannot be corrected by injunction, and the party aggrieved must seek some other remedy for redress[.]” *Williams v. Williams*, 99 S.W.3d 552, 560 (Mo. App. W.D. 2003) (quoting *Metts v. City of Pine Lawn*, 84 S.W.3d 106, 109 (Mo. App. E.D. 2002); *Fugel v. Becker*, 2 S.W.2d 743 (Mo. banc 1928)). Thus, the relief requested herein is inappropriate as the ballots have already been received and tabulated by the Defendants.

Simply put, the very actions that Plaintiff requests be enjoined have already occurred.²

III. There is No Likelihood that Plaintiff will Prevail on the Merits.

Before being granted preliminary relief, a party must show they are likely to succeed on the merits. *State ex rel. Koster v. Didion Land Project Ass'n, LLC*, 469 S.W.3d 914, 918 (Mo. App. E.D. 2015). Under Missouri law, “[a]n injunction is a remedy, not a cause of action; thus, an injunction must be based on a *recognized and pleaded* legal theory.” *State ex rel. Gardner v. Stelzer*, 568 S.W.3d 48, 51 (Mo. App. E.D. 2019) (emphasis added); *Suppes*, 613 S.W.3d at 847.

In this case, even if we were to assume that Plaintiff was somehow at risk of suffering immediate, irreparable harm and did not have an adequate remedy at law, which

² At present, counsel for Defendants is unaware of the results of the ballot count for the Proposed Amendments. To the extent either of the Proposed Amendments did not receive enough votes in favor and more owner ballots remain outstanding, either the Master Association or the Condominium may extend the voting period.

is simply not the case, Plaintiff still would not be entitled to the extraordinary injunctive relief he seeks because in this case, Plaintiff has not – and, indeed cannot – adequately plead an underlying cause of action.

The initial problem with Plaintiff’s request for a TRO is that he fails to adequately plead an underlying cause of action. In his Petition, Plaintiff claims that the Proposed Amendments are unlawful, ultra vires and unenforceable. Plaintiff further argues that the Proposed Amendments infringe upon members’ constitutional and statutory rights and violate the Declarations by suppressing free speech and exposing owners to liens and penalties without due process. Plaintiff, however, fails to cite to a single case in support of his position and provides this Court with virtually no analysis of his claim against Defendants. Most notably absent from the Petition is any indication that he is likely to succeed on the merits of his claim.

These assertions are “broad, conclusory statements of fact and legal conclusions,” and Plaintiff has failed to identify how these facts state a claim. *Camden County ex rel. Camden County Com’n*, 282 S.W.3d at 858. Moreover, these facts fail to invoke “substantive principles of law entitling [Plaintiff] to relief,” and do not “meet the elements of a recognized cause of action.” *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 329 (Mo. banc 2009). Here, like in *Stelzer*, “as the TRO Motion’s conclusory allegations failed to plead a separate underlying cause of action, they were inadequate to satisfy the pleading requirements for a petition for injunction.” *Stelzer*, 568 S.W.3d at 52; *see also Zoological Park Subdistrict of the Metropolitan Park Museum District v. Smith*, 561 S.W.3d 893, 896 (Mo. App. E.D. 2018).

To properly raise a constitutional issue, however, a pleading must, among other requirements, “designate specifically the constitutional provision claimed to have been violated.” *Westphal v. Lake Lotawana Ass’n, Inc.*, 95 S.W.3d 144, 150 (Mo. App. W.D. 2003) (citing *Laubinger v. Laubinger*, 5 S.W.3d 166, 173 (Mo. App. W.D. 1999)). “Because [Plaintiff] did not plead which constitutional provision the [Defendants’ proposed amendments] violated, [Plaintiff] did not properly raise a constitutional issue.” *Id.*

Plaintiff incorrectly alleges that “Defendants ... are Missouri nonprofit corporations subject to the Missouri Nonprofit Corporation Act (RSMo Ch. 355) and Missouri Condominium Act (RSMo Ch. 448).” Pet. ¶ 2. The Condominium is not a nonprofit corporation and, thus, is not subject to the provisions of the Missouri Nonprofit Corporation Act (“MNCA”). In addition, as condominium association organized prior to September 28, 1983, the Condominium is governed by the MCPA and certain applicable sections of Mo. Rev. Stat. §§ 448.1-101 to 448.4-120 of the Missouri Uniform Condominium Act (the “MUCA”). *See* Mo. Rev. Stat. § 448.1-102.1. Whereas, the Master Association is not a condominium and, thus, is not subject to either the MCPA or MUCA.

In an attempt to support his position, Plaintiff mischaracterizes the import of Section 355.141 of the MNCA and purposefully misquotes Section 448.2-117 of the MUCA and, as a result, fails to specify what “statutory rights” were allegedly infringed upon. (Pet. ¶¶ 10-11). As noted above, only certain provisions of the MUCA apply to the Condominium; Section 448.2-117 is not one of them. *See* Mo. Rev. Stat. § 448.1-102.1. Plaintiff would have the Court believe a “reasonable” standard should be applied, however, such standard

does not exist under Section 448.2-117. (Pet. ¶ 11). In addition, Section 355.141 of the MNCA does not put forth the proposition for which Plaintiff asserts it stands.³

“[A] restrictive covenant is a private contractual obligation generally governed by the same rules of construction applicable to any covenant or contract.” *Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC*, 585 S.W.3d 269, 280 (Mo. banc 2019) (internal citation omitted). “Thus, the principles of contract law apply when interpreting an indenture.” *Id.* (internal quotations and citation omitted). “To ascertain the parties’ intent, courts give the words of the contract their natural, ordinary, and common sense meaning.” *Id.* “In so doing, the contract’s terms are read as a whole to determine the intention of the parties and are given their plain, ordinary, and usually meaning.” *Id.* “Additionally, each term of a contract is construed to avoid rendering other terms meaningless.” *Id.*

Section 19.1 of the Condominium Declaration provides, in pertinent part, that the Condominium Declaration may be amended as follows:

Except as above provided, no modification or amendment of the Declaration or By-Laws herein shall be valid unless such modification or amendment has the written assent of the owners of all promissory notes secured by deed of trust of record and by the owners of at least seventy-five percent (75%) of the unit owners and until such modification or amendment is duly recorded in the Office of the Recorder of Deeds, St. Louis County, Missouri, PROVIDED, HOWEVER, that this Declaration and By-Laws shall at all times contain the minimum requirements imposed by Chapter 448, V.A.M.S., and, in particular, by Section 448.120, V.A.M.S., and disbursed as required by Sections 448.130 and 448.140, V.A.M.S.

(Emphasis in original).

³ Section 355.141 of the MNCA is titled “Power to act – challenge,” and in subsection 2 details how a corporation’s power to act may be challenged.

Article XI, Section 2 of the Master Declaration provides that it may be amended as follows:

This Declaration, and the restrictions, limitations, conditions and covenants herein contained, shall be and remain in force and effect until such time as all plats of Autumn Lakes may be vacate by the County of St. Louis or its successors. During such period, the restrictions, conditions, limitations or covenants of this Declaration may be altered, modified, amended, released, discontinued, terminated or extended by the owners of the majority of the units and lots of said properties executing and acknowledging an appropriate agreement or agreements in writing for such purposes, and filing the same for record in the Office of the Recorder of Deeds of St. Louis County, Missouri, after approval of the same by a majority of the then Board of Directors of the Association and the St. Louis County Planning Director, provided, however, that such approval shall not be unreasonably withheld.

The plain language of the Declarations gives the power to vote and approve or reject the Proposed Amendments to the owners in the way they believe is for the better. Plaintiff has vocally expressed his opposition to the Proposed Amendments, including in publishing Exhibits B and C in his Petition to the owners. Defendants do not dispute his right to do so, and suggest that is the proper method for him to voice is disagreement. Based upon the clear language of the Declarations, the Court should find that Plaintiff has failed to establish that his request for injunctive and declaratory relief is unlikely to prevail on the merits, and the request for a TRO should be denied.

IV. The Public Interest Supports Denial of Plaintiff's Request for Injunctive Relief and the Balance of Hardships Favors Defendants.

Defendants have incurred additional expenses from their third-party contractors, vendors and other business partners due to owners contacting them on behalf of Defendants without authorization. As a result, Defendants created the Proposed Amendments and submitted them to their owners for approval to help lower common expenses, which are

paid by all owners as part of their regular assessments, by allowing Defendants to charge these additional expenses back to the owner(s) responsible for incurring them. Without the authority to charge these additional expenses to the responsible owner(s), all owners, including those responsible, will suffer the burden of paying these expenses through the form of increased regular assessment payments, in a climate where expenses are already rapidly increasing for communities like Defendants.

Thus, not only would Plaintiff's requested TRO and preliminary relief harm Defendants, it would also cause harm to the other owners in the Subdivision, none of whom are even parties to this case. In turn, denial of Plaintiff's request for TRO advances the public interest. The public interest favors the enforcement of contracts according to their terms, including the provisions in the Declarations on amendments as set forth above. In addition, "[t]here is public interest in protecting the freedom to contract in a setting that provides for equal bargaining powers and the power to bargain for and protect one's personal rights and interests." *Milligan v. Chesterfield Vill. GP*, 239 S.W.3d 613, 626 (Mo. App. S.D. 2007) (Rahmeyer, J., dissenting in part and concurring in part); *see also Willman v. Beheler*, 499 S.W.2d 770,777 (Mo. 1973) (Missouri law recognizes "the interest of the public in protecting the freedom of persons to contract and in enforcing contractual rights and obligations.") (reversed on other grounds). It is undisputed that Plaintiff is bound by and agreed to comply with the terms of the Declarations, including the amendment provisions, when he purchased property within the Subdivision. Plaintiff cannot dispute that the Declarations specifically authorize amendments, as he now intends to do. An order

denying Plaintiff's request in favor of Defendants' ability to carry out its contractual rights advances the public interest in protecting freedom to contract.

V. Alternatively, Plaintiff Must Post a Bond.

In the event that the Court decides to grant a TRO (and it should not for the foregoing reasons), Plaintiff must be required to post a bond. Mo. Sup. Ct. R. 92.02(d) (“[n]o injunction or temporary restraining order . . . shall issue in any case . . . until the plaintiff . . . shall have executed a bond with sufficient surety or sureties to the other party, in such sum as the court shall deem sufficient to secure the amount or other matter to be enjoined, and all damages that may be occasioned by such injunction or temporary restraining order to the parties enjoined”). An order or injunction “issued without a bond is void.” *Curtis v. Tozer*, 374 S.W.2d 557, 586 (Mo. App. E.D. 1964); *Ruddy v. Corning*, 501 S.W.2d 537, 539 (Mo. App. E.D. 1973) (“The requirement that a bond be executed prior to issuance of a temporary injunction is jurisdictional, and a temporary injunction issued without a bond is void.”).

The purpose of a temporary restraining order bond, after all, is to “protect parties who sustain damage as a result of compliance with a temporary restraining order later determined to have been illegally or improperly issued.” *Mech v. Gruensfelder*, 461 S.W.2d 298, 309 (Mo. App. E.D. 1970).

If this Court were to grant Plaintiff a TRO, Defendants respectfully request, were the Court to issue the temporary restraining order requested by Plaintiff, that it require a bond in the amount of \$25,000.00 as the bond related to each of the Defendants for a total of \$50,000.00.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants Autumn Lakes Condominium and Autumn Lakes Association, respectfully ask this Court to deny Plaintiffs' Motion for Temporary Restraining Order, and for such other relief as the Court deems proper and just.

Respectfully submitted,

CARMODY MACDONALD P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served via the Court's electronic filing system to all counsel of record on September 10, 2025 and email to Plaintiff Mark E. Gavan, Mark@AutumnLakesUncensored.com.

/s/ Kerri A. Mitchell