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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

JOHN MCKISSOCK,

Plaintiff and Respondent,

v.

BARRY KASHFIAN et al.,

Defendants and Appellants.

B275929

Los Angeles County
Super. Ct. No. YC070587

APPEAL from an order of the Superior Court of Los Angeles County, Stuart M. Rice, Judge. Reversed.

Kenneth Gaugh for Defendant and Appellant.

Spierer Woodward Corbalis & Goldberg, Steven Franklin Spierer, Stephen B. Goldberg and Michelle R. DeMason for Plaintiff and Respondent.

INTRODUCTION

Plaintiff John McKissock owns three suites in a medical plaza, parts of which are located above a suite owned by defendant Barry Kashfian. After McKissock purchased his suites, a dispute arose between McKissock and Kashfian over the interpretation of the plaza's declaration of conditions, covenants, and restrictions (CC&Rs). Specifically, McKissock contends he has a right to enter, and perform construction within, Kashfian's suite to connect certain utility lines originating in McKissock's suites to utility systems located in the common areas surrounding Kashfian's suite. After Kashfian refused to allow McKissock to enter his suite to perform such construction, McKissock sued Kashfian for, among other things, trespass and declaratory relief, alleging he had violated the CC&Rs.

Kashfian appeals from the trial court's order granting McKissock a preliminary injunction. The injunction requires Kashfian to provide McKissock access to Kashfian's suite for six months to facilitate and complete the construction. We conclude the preliminary injunction was mandatory in nature and the court's order effectively decided the merits of McKissock's lawsuit—i.e., that order granted his requested permanent injunction. We also conclude McKissock failed to demonstrate he has a clearly established right to injunctive relief under the CC&Rs. We therefore reverse.

FACTS AND PROCEDURAL BACKGROUND

1. McKissock Purchases Suites in the Medical Plaza

McKissock is a plastic surgeon who operates a medical practice out of leased office space on Lomita Boulevard in Torrance. In June 2014, he purchased three second-floor suites in

the Peninsula Medical Plaza (Medical Plaza), also located in Torrance, where he intended to relocate his practice. Kashfian is a prosthodontist and dental surgeon who owns, and operates his medical practice out of, a suite in the Medical Plaza located below McKissock's suites. Janet Lee and Hyun Bong Lee¹ are physicians who also own suites in the Medical Plaza that are located below McKissock's suites.

The Medical Plaza contains 55 suites intended for use as medical offices. At the time they were converted to and later sold as medical offices, many of the suites were not equipped with proper drainage, sewage, and other utilities to accommodate certain types of surgical and medical practices. Some of the owners who purchased suites in the Medical Plaza, such as Kashfian, Janet, and Hyun, have renovated their units to include the necessary utilities.

At the time he purchased his suites in the Medical Plaza, McKissock was aware they were not equipped with the proper utilities to accommodate his practice. To cover the anticipated cost of renovating his suites, McKissock obtained a \$575,277 construction loan. McKissock also hired a general contractor and an architect to devise a construction plan for installing the utilities necessary to operate his medical practice.

McKissock's contractor determined that, in order to adequately retrofit his suites, McKissock would need to install sewage, drainage, and other utility pipes that would connect to preexisting lines running through the common areas surrounding the suites located below McKissock's suites, including Kashfian's

¹ Because they share the same last names, we refer to Janet Lee and Hyun Bong Lee by their first names.

and Janet and Hyun's suites. Such renovations would require McKissock to perform construction work inside those suites. With respect to Kashfian's suite, McKissock would need to dig under Kashfian's floor to access an underground sewer line. Specifically, McKissock would need to install utility pipes that run from that sewer line to McKissock's suites.

Around November 2014, McKissock approached Kashfian about obtaining access to Kashfian's suite to connect utility pipes into the sewer line beneath Kashfian's suite.² Kashfian initially cooperated, allowing McKissock's contractor to conduct visual inspections of his suite and providing the contractor with a set of his suite's "proposed" plumbing plans.³ Kashfian has refused, however, to allow McKissock to perform construction inside Kashfian's suite. As a result, McKissock continues to lease his current office space on Lomita Boulevard because he has been unable to move his practice to his suites in the Medical Plaza.

² McKissock also engaged in similar discussions with Janet about connecting utility lines in the common areas surrounding the suite she shares with Hyun. Although Janet initially was reluctant to grant McKissock access, she has since agreed to allow McKissock to perform construction in her suite.

³ Kashfian's plans apparently did not confirm the location of the existing utility lines running through the common areas surrounding Kashfian's suite, since, according to McKissock's contractor, the final locations of such lines are typically not depicted in the types of plans Kashfian provided. Instead, the final locations of such lines are usually determined at the time they are installed and, as a result, may not be reflected in a unit's plumbing plans.

2. The Medical Plaza's CC&Rs

Each suite in the Medical Plaza is governed by a set of CC&Rs, which were drafted and recorded in December 2007 by LA-Peninsula Medical, LLC, the original common owner of the Medical Plaza. The CC&Rs set forth the respective rights and responsibilities of LA-Peninsula Medical, LLC, the Peninsula Medical Plaza Owner's Association, and the individual owners of suites in the Medical Plaza. In McKissock's view, the CC&Rs provide him a right to access Kashfian's suite to install the necessary utility connections in the common areas located above, below, and adjacent to that suite.

Section 2.2.b of the CC&Rs provides that "[e]ach Owner shall have, as appurtenant to its [suite], an undivided common ownership interest in the Common Area[,] . . . [and] [e]ach [suite] shall have appurtenant to it nonexclusive easements for ingress, egress, and support through the Common Area." However, that section restricts each owner's use of the common areas to "the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Owners."

The CC&Rs define the Medical Plaza's common areas as well as the boundaries of each owner's suite. The common areas, which are "owned in common by each of the [o]wners," include "land, parking and driveway areas; trash enclosures; conduits, pipes, plumbing, wires, and other utility installations (except the outlets thereof when located within any [suite]) . . . required to provide power, light, telephone, gas, water, sewage, drainage, and elevator service." The common areas also include "[t]he plumbing, sewer, electric wiring, telephone cables, and other utilities and services located in the floor area of a [suite] or inside of the perimeter walls of such [suite]," except "any wires, pipes,

conduits, cables, and the like . . . which connect facilities servicing [a suite]”, which are “owned, maintained, and installed by the Owner as Restricted Common Area from the point of connection with the common Lines to the point where the Lines terminate in the Owner’s [suite].”

A suite consists of “the space bounded by and contained within the interior finished surfaces of the perimeter walls, ceilings or roofs . . . of each unit.” The upper boundary of a suite located on the ground or second floor is the “interior underside of the ceiling” of such suite. The space between exterior walls dividing separately owned suites qualifies as a common area under the CC&Rs.

Section 4.6.a provides each owner of a suite in the Medical Plaza easements over other owners’ suites to make use of utility lines and connections installed within the Medical Plaza that serve that particular owner’s suite. Specifically, section 4.6.a of the CC&Rs provides: “Wherever sanitary sewer line connections, water line connections, electricity, gas, telephone, communication and cable television lines or drainage facilities are installed within the [Medical Plaza], the Owners of any [suites] served by said connections, lines or facilities shall have the right to . . . easements over each Owner’s [suite] to the full extent necessary for the full use and enjoyment of such portion of such connections which service such [suite]” That section also provides that an owner of a suite in the Medical Plaza shall have the right “to enter upon any [suites] owned by any other Owner, or to have utility companies enter upon such areas, in or upon which said connections, lines or facilities, or any portion thereof are situated, to repair, replace and generally maintain said connections as and when the same may be necessary . . . , provided that such Owner

or utility company shall promptly repair any damage caused by such entry as promptly as possible after completion of work thereon.”

Finally, section 4.6.b provides that each owner has an easement “for drainage through the Common Areas drainage patterns and systems established by Declarant from time to time upon the Property.”

3. McKissock’s Lawsuit

In May 2015, McKissock sued Kashfian, Janet, Hyun, and Hyun Bong Lee, D.O., Inc., claiming the defendants had violated the Medical Plaza’s CC&Rs by denying McKissock access to their suites to perform the construction work necessary to retrofit his own suites. In February 2016, McKissock filed the operative first amended complaint, alleging claims for (1) trespass; (2)

“TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES”; (3) declaratory relief; and (4) **“DAMAGES FOR NUISANCE.”**

On February 29, 2016, McKissock filed an application for injunctive relief, seeking an order enjoining Kashfian and Hyun from “obstructing [McKissock’s] access to their suites . . . for the purpose of completing construction of [McKissock’s] own medical office.” McKissock argued that the CC&Rs provided him a right of access to the defendants’ suites to install utility connections in the common areas surrounding those suites. McKissock claimed he would suffer irreparable harm if the court did not issue a preliminary injunction granting him access to the defendants’ suites because he “is hemorrhaging substantial monetary losses,” including paying more than \$10,000 per month in rent for his Lomita Boulevard office space, and could potentially lose his

construction loan. As of the time he filed his application for a preliminary injunction, McKissock's "capital holdings [had] been diminished by more than \$250,000."

Kashfian and Hyun opposed McKissock's application. In his opposition, Kashfian argued the court should deny McKissock's request for an injunction because McKissock had yet to provide Kashfian with "a set of construction plans approved by the City of Torrance which would inform [Kashfian] how [McKissock's] contractor intended to install [McKissock's] improvements in [Kashfian's] suite." (Emphasis omitted.) Kashfian objected to the construction plan that McKissock had proposed because it required utilization of Kashfian's personal "lateral drainage lines" that were installed in non-common areas of Kashfian's suite. Kashfian stated he would, however, grant access for construction of McKissock's drainage and sewage improvements in the common areas surrounding Kashfian's suite "once the City of Torrance approves such plans and it can be constructed in a manner of least disruption to [Kashfian's] dental practice."

On April 11, 2016, McKissock and Janet entered a stipulation through which Janet agreed to allow McKissock and his construction crew to access Janet's and Hyun's suite "for the purpose of allowing [McKissock] to install his plumbing lines and/or other utilities in the common area above [the] suite."

On April 20, 2016, the court held a hearing on McKissock's application for a preliminary injunction. McKissock's contractor testified about two sets of construction plans that McKissock had proposed to Kashfian. Although the first plan, Plan A, had been submitted to, and approved by, the City of Torrance, it had been rejected by Kashfian and, according to the parties and the court, apparently fell outside the scope of the CC&Rs. The second plan,

Plan B, required McKissock to “trench and lay pipes under [Kashfian’s] slab to tie into the main sewer line.” According to the contractor, McKissock would need to install pipes that run from his suites and tie into the sewer line located below the floor of Kashfian’s suite.⁴

At the hearing, Kashfian argued that the court should deny McKissock’s application because the CC&Rs do not allow McKissock to enter Kashfian’s suite to tie into the sewer line running underneath that suite. Specifically, he contended that McKissock only has a right to tie into existing drainage or sewage systems that provide utilities to his suites. Since McKissock would need to install a “new conduit” that would allow his suites to tie into the sewer line that runs underneath Kashfian’s suite, such work would fall outside the scope of the CC&Rs.

On April 28, 2016, the court granted McKissock’s application for injunctive relief. The court’s order requires Kashfian to “provide McKissock ([and] his contractor/architect/agents) access to [Kashfian’s] suite for the purpose of allowing McKissock to install plumbing lines and/or other utilities within the common area that lay above/below/adjacent/parallel to Kashfian’s suite,” and it precludes Kashfian from “unreasonably obstruct[ing]” McKissock’s “construction efforts so long as said efforts do not

⁴ Plan B apparently shows where McKissock’s contractor believes the main sewer line that runs under Kashfian’s suite is located and where McKissock would need to install new piping to connect his suites to that line. We are unable to ascertain where the main sewer line is located and where McKissock intends to connect to that line because McKissock never moved to admit Plan B into evidence. As a result, it is not part of the trial court’s file or the record on appeal.

exceed the access granted” pursuant to the order. The order requires Kashfian to provide McKissock a key to Kashfian’s suite.

The order gives McKissock “liberal[]” access to two rooms in Kashfian’s suite—the “ ‘Back Work-Room’ ” and the “ ‘Lecture Room’ ”—and “reasonably allow[s] access beyond those rooms only if piping/utility lines necessary to complete construction are found to be situated in another location and/or extend beyond the perimeter of [those] rooms.” If such piping or utility lines are found beyond those two rooms, “McKissock’s right of access shall be expanded to other portions of Kashfian’s suite only to the extent necessary in order to complete construction and upon 2 days notice to Kashfian . . . [,] and McKissock’s rights shall continue to be limited by the scope of the CC&Rs and the limitations of access set forth” within the order.

The order also addresses the scheduling of McKissock’s construction work. McKissock must provide Kashfian one week’s notice before he enters Kashfian’s suite. McKissock must provide Kashfian a “rough estimated schedule for work,” outlining when and where construction will take place, on or before McKissock’s first day of entry. “[McKissock’s] schedule will be reasonably subject to modification as practically necessary during the course of the construction project,” and McKissock must notify Kashfian of “any substantive changes to the rough estimated schedule in the same manner . . . for [providing] initial notice of intent to enter.”

Under the order, McKissock and his construction team may access Kashfian’s suite “between the hours of 6 pm and 8 am on Monday through Friday at a maximum; and anytime on Saturday and Sunday as long as McKissock is in compliance with building regulations and local city ordinances, for the purpose of

advancing and completing construction.” The order provides McKissock “the right to access Kashfian’s suite for the purpose of construction for so long as reasonably necessary in order to complete construction,” but such period shall not exceed six months from the first day McKissock and his construction team enter Kashfian’s suite “for the purpose of construction,” absent further court order or Kashfian’s consent. McKissock and his construction team must “make due diligent and reasonable efforts to limit the scope and duration of work taking place within Kashfian’s suite so as to limit the duration and extent of any disruption that may be caused by McKissock’s construction project.”

The order restricts McKissock’s finished construction to the common areas surrounding Kashfian’s suite. That is, McKissock’s completed work may not “intrude or invade into space contained within Kashfian’s suite,” unless Kashfian otherwise agrees to allow McKissock’s construction to encroach into his private office space. The order also restricts McKissock from “damaging or removing any of Kashfian’s custom built fixtures or flooring,” and it prohibits McKissock from altering or using lateral lines “as they are placed within the common area that were installed by Kashfian[,] except as specifically authorized by Kashfian as a means of expediting completion of McKissock’s construction project.” Once construction is completed, McKissock must restore Kashfian’s suite “to its condition existing prior to construction,” or “to a materially and substantively comparable condition if the original condition cannot be duplicated.”

The order requires McKissock and his construction team to “proceed with a requisite level of skill and due care applicable to industry standards in the construction business” and to “make

diligent efforts to avoid conduct/activity that would result in Kashfian being exposed to inconvenience or intrusion beyond that which, as a practical matter, is necessitated by the work contemplated [by the order].” If McKissock and Kashfian cannot resolve disputes about whether the scope of McKissock’s “necessary work” must “exceed[] the access granted [by the court],” McKissock may bring an ex parte application, upon five days notice, to allow the court to resolve the parties’ dispute. Finally, the order requires McKissock to post a \$50,000 bond.⁵

Kashfian filed a timely notice of appeal from the April 28, 2016 order issuing the preliminary injunction.

DISCUSSION

1. Applicable Law and Standard of Review

The purpose of a preliminary injunction is to preserve the status quo pending resolution of the merits of the action. (*SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280 (*SB Liberty*).) “ ‘The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate

⁵ The April 28, 2016 order also addresses McKissock’s request for a preliminary injunction against Janet and Hyun, which, as the order states, was mooted by McKissock’s and Janet’s stipulation providing McKissock access to Janet’s and Hyun’s suites, and it includes a provision addressing “Delta Computer Consulting, Inc.” (Delta Computer), which the court identified as a “Doe Defendant” that defaulted in the underlying proceedings. That provision states that “all orders pertaining to access between [McKissock] and Kashfian . . . are also ordered as they pertain to Delta Computer Consulting, Inc.” Delta Computer is not a party to this appeal. Accordingly, nothing in this opinion should be construed to address the validity of the April 28, 2016 order as it applies to Delta Computer.

rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or . . . should not be restrained from exercising the right claimed by him.” ’ [Citation.]” (*Ibid.*)

A trial court must weigh two interrelated factors in deciding whether to grant or deny a request for a preliminary injunction: (1) the likelihood that the party seeking the injunction will prevail on the merits of his claim; and (2) the comparative harm the parties will suffer if the court issues or does not issue the injunction. (*Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 361.) The court should analyze these factors on a sliding scale—that is, if the plaintiff demonstrates a high likelihood of success on the merits, then a lesser showing of irreparable harm is required, and vice versa. (*Ibid.*) The plaintiff, however, must show that there is at least some likelihood of success on the merits. A court may not issue a preliminary injunction, no matter the extent of the harm the plaintiff is likely to suffer if no injunction is issued, if there is no probability that the plaintiff will prevail on his underlying claim. (*Ibid.*)

Ordinarily, we review an order granting or denying a motion for preliminary injunction for abuse of discretion. (*SB Liberty, supra*, 217 Cal.App.4th at pp. 280–281.) To the extent the court’s ruling granting the preliminary injunction turns on a question of law, such as the interpretation of a written instrument, our review is de novo. (*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463; *Hott v. College of Sequoias Community College Dist.* (2016) 3 Cal.App.5th 84, 96.)

We emphasize, however, “that ‘ ‘ [a] preliminary *mandatory* injunction is rarely granted, and is subject to stricter

review on appeal.’ ” [Citation.]” (*Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493.) To warrant granting a mandatory injunction, the right to such an injunction must be “clearly established” and “irreparable injury” must flow from the refusal to grant it. (*Davenport v. Blue Cross* (1997) 52 Cal.App.4th 435, 448 (*Davenport*).) Thus, before turning to the merits, we must determine whether the preliminary injunction at issue in this case is prohibitory or mandatory.

A prohibitory injunction precludes a party from performing an act that should not be performed, while a mandatory injunction requires a party to perform an affirmative act that changes the status quo. (See Civ. Code, §§ 3367, subd. (2) [mandatory injunction], 3368 [prohibitory injunction]; see also *Davenport, supra*, 52 Cal.App.4th at pp. 446–447.) The “status quo” for purposes of reviewing an order granting a preliminary injunction is “the last actual peaceable, uncontested status which preceded the pending controversy.” (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1184, internal quotations and citations omitted (*Integrated Dynamic Solutions*).) “The substance of the injunction, not the form, determines whether it is mandatory or prohibitory.” (*Davenport, supra*, at p. 447.)

The “status quo” in this case was the respective conditions of Kashfian’s and McKissock’s suites at the time the parties’ dispute arose. At that time, McKissock’s suites lacked the drainage, sewage, and other utility connections McKissock contends are necessary to operate his medical practice, while Kashfian’s suite was free from any intrusion on McKissock’s part to construct or install utility connections in the common areas surrounding Kashfian’s suite. The preliminary injunction in this

case alters that status quo by (1) requiring Kashfian to perform a mandatory act—i.e., providing McKissock with a set of keys to Kashfian’s suite; (2) authorizing McKissock to enter Kashfian’s suite to perform construction in the suite’s surrounding common areas; and (3) prohibiting Kashfian from obstructing McKissock’s access to Kashfian’s suite to perform that construction.

Because the preliminary injunction in this case changes the status quo, it is a mandatory injunction subject to greater scrutiny on appeal. (See *Integrated Dynamic Solutions, supra*, 6 Cal.App.5th at pp. 1184, 1186.) As we explain below, the court erred when it issued the injunction.

2. The preliminary injunction is improper because it operates as a permanent injunction.

When a complaint seeks both a preliminary and a permanent injunction, a court may not issue a permanent injunction when ruling on an application for a preliminary injunction. (*Yee v. American National Ins. Co.* (2015) 235 Cal.App.4th 453, 457–458 (*Yee*)). That is because an order issuing a preliminary injunction does not decide the merits of the plaintiff’s underlying causes of action. (*Id.* at p. 458.) Thus, it is generally an abuse of discretion for a court to issue a preliminary injunction that effectively decides the merits of the plaintiff’s claims and provides the plaintiff the ultimate relief he seeks. (*Ibid.*) “Were the law otherwise, it would provide a handy guide for how to succeed in a lawsuit without really trying—i.e., how to obtain permanent relief preliminarily.” (*Ibid.*)

Here, the preliminary injunction operates as a final determination of the merits because it resolves a core issue in McKissock’s lawsuit and provides him with the ultimate relief he seeks. Each claim in McKissock’s lawsuit is premised on the

assertion that the CC&Rs provide him a right to enter Kashfian's suite to install utility connections in that suite's surrounding common areas. In the operative complaint, McKissock seeks a preliminary injunction *and* a permanent injunction enforcing that right. The preliminary injunction that the court issued in this case fully enforces that right—it provides McKissock “the right to access Kashfian's suite for the purpose of construction for so long as reasonably necessary in order to *complete* construction” (Italics added.) As a practical matter, there is no difference between the preliminary injunction that the court issued and the permanent injunction that McKissock seeks as part of a final judgment on the merits. In other words, once McKissock completes the construction authorized by the preliminary injunction, there will no longer be a need for the court to issue a permanent injunction. The court, therefore, abused its discretion in issuing the preliminary injunction. (See *Yee, supra*, 235 Cal.App.4th at p. 458; see also *Paul v. Allied Dairymen, Inc.* (1962) 209 Cal.App.2d 112, 122 [“ ‘Unless [a] defendant defaults in pleading, it is improper to render a final decree granting a perpetual injunction on the basis of the evidence produced on the hearing of an application for a preliminary injunction.’ ”].)

3. McKissock failed to demonstrate he has a clearly established right to an injunction.

Even assuming the preliminary injunction does not operate as a permanent injunction, McKissock did not prove he has a “clearly established” right to injunctive relief. (See *Davenport, supra*, 52 Cal.App.4th at p. 448.) Specifically, McKissock failed to present sufficient evidence clearly establishing the CC&Rs provide him a right to enter Kashfian's suite to perform the construction work authorized by the court's order.

“The interpretation of CC&Rs is subject to the same rules governing the interpretation of contracts.” (*Christian v. Flora* (2008) 164 Cal.App.4th 539, 551.) Where, as here, the parties have not submitted any extrinsic evidence on the meaning of the CC&Rs, the interpretation of that document is a judicial function. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.)

We begin our analysis with section 4.6.a of the CC&Rs. That provision provides an owner two sets of rights with respect to utility connections that serve his or her suite. The first clause of the section provides the owner of a suite that is “served by” certain utility connections, such as sewer lines and drainage facilities, an easement over other suites in the Medical Plaza “for the full use and enjoyment” of the portion of those connections that “service” that owner’s suite. The second clause of section 4.6.a provides the owner of a suite that is served by those connections a right “to enter” any other suite in the Medical Plaza where those connections are located for the purpose of “repair[ing], replac[ing] and generally maintain[ing]” the connections.

As the language of section 4.6.a makes clear, an owner’s suite must be *served by* a particular utility connection before that owner has an easement over, or the right to access, another owner’s suite for the purpose of using, repairing, replacing, or maintaining that connection. If an owner’s suite is not served by a particular connection, section 4.6.a does not provide that owner any easement over, or any right to enter, another owner’s suite to gain access to that connection.

McKissock did not clearly establish that section 4.6.a provides him a right to enter Kashfian’s suite. Specifically,

because McKissock did not introduce into evidence the plan he intends to follow in carrying out the construction work authorized by the preliminary injunction, there is no evidence that McKissock's suites are currently "served by" any existing utility lines or connections he intends to gain access to through Kashfian's suite. In fact, based on the testimony of his contractor, it appears that McKissock intends to establish a *new* connection to his suites by installing pipes that would run from his suites into the sewer line underneath Kashfian's floor. If that is the case, McKissock would not have a right to access Kashfian's suite under section 4.6.a, since McKissock's suites are not yet "served by" that sewer line.

McKissock also failed to demonstrate he has a right to access Kashfian's suite for construction purposes under sections 2.2.b and 4.6.b of the CC&Rs. Section 2.2.b provides each owner of a suite in the Medical Plaza an easement for "ingress, egress, and support" through the Medical Plaza's common areas, while section 4.6.b provides each owner "easements for drainage through the Common Areas drainage patterns and system." Neither provision, however, states that an owner has the right to access another owner's suite to install utility lines in the common areas that surround the other owner's suite.

In sum, McKissock failed to demonstrate he has a clearly established right to injunctive relief under the terms of the CC&Rs. As a result, the court erred in issuing the preliminary injunction against Kashfian.⁶ (See *Davenport, supra*, 52 Cal.App.4th at p. 448.)

⁶ Because we conclude McKissock failed to show he has a "clearly established" right to injunctive relief, we need not address whether the

DISPOSITION

The order granting the preliminary injunction is reversed to the extent it applies to Kashfian. Kashfian shall recover his costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.

court properly balanced the respective harms the parties would suffer if the court did, or did not, grant the preliminary injunction.