

CAUSE NO. 20-05-05682

KENNETH A. BITGOOD

v.

STEPHEN S. HARKNESS AND
ANNA M. HARKNESS

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IN THE DISTRICT COURT

284th JUDICIAL DISTRICT

MONTGOMERY COUNTY, TEXAS

TEMPORARY INJUNCTION

On June 2, 2020, the Court considered Plaintiff Kenneth A. Bitgood's ("Plaintiff") application Temporary Injunction in this cause against Defendants Stephen S. Harkness and Anna M. Harkness (collectively "Defendants"). Present before the Court, after having been duly served and provided notice, were Plaintiff and his counsel as well as Defendants and their counsel.

The Court has examined Plaintiff's First Amended Application for Temporary Injunction, Permanent Injunction, and Original Petition, attachments thereto, Defendants' answer, attachments thereto; has heard the testimony, evidence and arguments of all parties; and has considered the law. Based on the forgoing, the Court hereby finds that Plaintiff's Application for Temporary Injunction has merit and that there will be immediate injury to Plaintiff unless Defendants are enjoined as requested because it appears from the facts in the pleadings, testimony, evidence, applicable statutory provisions, and case law that Defendants are in violation of the deed restrictions for the property located at 9239 Lake Conroe Drive, Conroe, Texas 77304 ("Property").

An injunction “to enforce a restrictive covenant is not required to prove irreparable injury,”¹ rather, “an applicant needs to show only that the nonmovant intends to do an act that would breach the covenant.”² The Court finds from the application that Plaintiff has shown the Defendants intend to do an act that would breach the covenant, namely, construction in violation of the deed restrictions on the Property.

Further, the Court finds Defendants intend to continue with the harmful and offending construction, and the injury to Plaintiff will continue to take place without the temporary injunction; therefore, the harm is imminent. It is therefore,

ORDERED that Defendants, their representatives, agents, employees, assigns, and all others acting on your behalf, are therefore commanded to obey the order of the Court and to:

1. Cease and Desist any and all construction on the Property, except as follows:
 - a. Defendants may remove the dying tree on the Property, as discussed at the temporary injunction hearing;
 - b. Defendants may install three-rail vinyl fencing, in accordance with the deed restrictions, as discussed at the temporary injunction hearing. It is further,

¹ *Jim Rutherford Invs. v. Tarramar Beach Cmty. Ass’n*, 25 S.W.3d 845, 849 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

² *Marcus v. Whispering Springs Homeowners Ass’n*, 153 S.W.3d 702, 707 (Tex. App.—Dallas 2005, no pet.).

ORDERED that bond is increased to the amount of \$20,000.00 which is to be paid by Plaintiff. The Court has determined this amount shall serve as a good and sufficient bond in support of the issuance of this Temporary Injunction. It is further,

ORDERED that the Clerk shall set the matter for trial before me on the 2nd day of November, 2020, in the 284th Judicial District Court of Montgomery County, Texas, at which time Plaintiff's Request for Permanent Injunction and request for any further relief shall be tried.


Issued at _____ 6/4/2020 2:12:28 PM _____.



JUDGE PRESIDING

ENTRY REQUESTED:

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC



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