

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-094083

08/04/2014

HONORABLE DAVID M. TALAMANTE

CLERK OF THE COURT
M. Kay
Deputy

FRIENDLY VILLAGE OF ORANGEWOOD
MOBILE HOME PARK

DOUGLAS N NELSON

v.

PAUL HAZELWOOD, et al.

PAUL HAZELWOOD
NO ADDRESS ON RECORD

SHIRLEY HAZELWOOD
NO ADDRESS ON RECORD
KARL S PEARSON

MINUTE ENTRY

Courtroom 207 – SEA

Prior to the commencement of today's proceeding, Plaintiff's exhibits 1 through 11 are marked for identification.

2:06 p.m. This is the time set for Evidentiary Hearing re: Plaintiff's Application for Temporary Restraining Order and Preliminary Injunction and Order to Show Cause Why Preliminary Injunction Should Not Issue. Counsel, Douglas N. Nelson, is present on behalf of Plaintiff (company representative Michelle Thompson is present and Regional Manager, Douglas Black appears telephonically). Counsel, Karl S. Pearson, is present on behalf of Defendant Trend Star Homes, Inc. (company representative, Gary Eckert, is present).

A record of the proceeding is made by audio and/or videotape in lieu of a court reporter.

The Court has reviewed the case file and the pleadings filed by the parties.

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Counsel for Plaintiff advises the Court that he is in the process of serving Defendants Hazelwood by publication. Counsel has been advised by attorney Karl Pearsen that Defendants Hazelwood reside in Iowa and that he will be provided with their address.

Plaintiff's case:

Gary Eckert is sworn and testifies.

Pursuant to the stipulation of counsel,

Plaintiff's exhibits 1 through 11 are received in evidence.

The witness is excused.

Douglas H. Black is sworn and testifies.

The witness is excused.

Plaintiff rests.

Defendant moves the Court for a directed verdict.

On the factual allegations and the evidence that has been produced today on the issues raised,

THE COURT FINDS that Plaintiff has met its burden in establishing a prima facie case.

IT IS ORDERED denying Defendant's motion for directed verdict.

With regard to the application of A.R.S. §33-1451(B) and §33-1485.01(B) alleged by Defendant,

IT IS ORDERED taking that matter under advisement.

Defendant Trend Star Homes, Inc.'s case:

Gary Eckert testifies further.

The witness is excused.

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Defendant rests.

Based on the testimony and evidence presented,

The Court states its inclinations on the record.

Plaintiff waives presentation of closing arguments.

Closing arguments are presented by Defendant Trend Star Homes, Inc.

THE COURT DOES NOT FIND any evidence of a “scam” on the part of Defendant Trend Star Homes, Inc.

THE COURT FINDS that there is a right of first refusal in this case. The notice of the intent to sell was not provided to Plaintiff as contemplated in the rental agreement. Therefore, the Plaintiff was deprived of the opportunity to exercise its right to purchase the subject property.

THE COURT FINDS that Defendants Hazelwood are bound by the first right of refusal. Defendant Trend Star Homes, Inc., through Mr. Eckert, was aware of the right of first refusal when he entered into the agreement with Defendants Hazelwood. Therefore, Defendant Trend Star Homes, Inc. is also bound by the first right of refusal.

THE COURT FINDS that there is a strong likelihood of success on the merits with regard to enforcement of the first right of refusal.

THE COURT FINDS that damages are not an adequate remedy in this matter. The hardship favors Plaintiff in this matter.

THE COURT FINDS that public policy would favor enforcement of the first right of refusal in the contract signed by Defendants Hazelwood.

For these reasons and the reasons expressed on the record,

The Court is inclined to grant Plaintiff’s request for a preliminary injunction.

The Court is further inclined to order that Plaintiff shall post a security bond in the amount of \$21,500.00.

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IT IS ORDERED affirming that Defendant's request for application of A.R.S. §33-1451(B) and §33-1485.01(B) is taken under advisement.

3:54 p.m. Hearing concludes.

FILED: Exhibit Worksheet

LATER:

THE COURT FINDS that the agreement for the first right of refusal in the addendum is not a "prohibited provision" within the meaning of A.R.S. §33-1414 and is enforceable notwithstanding A.R.S. §33-1451(B) and §33-1485.01(B) and that its application in this matter is not unconscionable within the meaning of A.R.S. §33-1411.

IT IS ORDERED affirming the findings and inclinations set forth above.

IT IS FURTHER ORDERED directing Plaintiff to submit a form of Preliminary Injunction on or before **August 15, 2014**.