

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/01/18

DEPT. F49

HONORABLE STEPHEN PFAHLER

JUDGE

M. HENDERSON

DEPUTY CLERK

HONORABLE
#4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

K. JOHNSON, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

PC056481

Plaintiff

DEBORAH J. FOX (X)

Counsel

JENNIFER L. RIGGS (X)

PEOPLE OF THE STATE OF CALIFORNIA
VS.
BARTON WAYNE FISHBACK

Defendant

MAINAK D'ATTARAY (X)

Counsel

JESSE TERRELL (X)
STOLLER LAW GROUP (X)
JEFFREY MALONEY (X) (CC)

NATURE OF PROCEEDINGS:

MOTION TO MODIFY PRELIMINARY INJUNCTION;

ORDER TO SHOW CAUSE RE STATUS OF APPEAL AND BANKRUPTCY
BANKRUPTCY; AND

ORDER TO SHOW CAUSE RE RELATED CASE;

The Order Appointing Court Approved Reporter as
Official Reporter Pro Tempore is signed and filed
this date.

The matters are called for hearing.

The Court inquires with the parties about the status
of the appeal and the bankruptcy.

The Court continues the above listed Order to
Show Cause hearings to October 1, 2018, at 8:30 a.m.,
in Department F49.

Regarding the Order to Show Cause re appeal and
bankruptcy, all parties are ordered to file and serve
a status report, including any relevant documentation,
informing the Court of the following:

1. The current status of the bankruptcy and the
appeal;
2. The anticipated date of final resolution of the
bankruptcy and appeal; and

<p align="center">MINUTES ENTERED 06/01/18 COUNTY CLERK</p>

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NATURE OF PROCEEDINGS:

3. How the parties wish to proceed with this civil action.

The status report must be filed directly in Department F49 at least 20 calendar days prior to the next OSC(s) date on October 1, 2018. Any parties' failure to file the status report in violation of the Court's order may result in sanctions. The case is stayed.

Regarding the appeal, or until the Court of Appeals or this Court orders otherwise, the Order to Show Cause re related cases, all parties in both cases are ordered to file a brief not to exceed five pages in length as to whether or not the cases, case number PC056481 and case number PC057771 are to be deemed related. The Plaintiff in this action shall give notice to the parties in the other case of the hearing as to the OSC re related cases set for October 1, 2018, with Plaintiff's counsel filing proof of that notice within 14 days from today date.

The Court listens to argument from all parties regarding Plaintiff's motion to Modify Preliminary Injunction.

The matter is taken under submission.

Later, the Court rules as follows:

The motion is granted, in part, and denied in part, as

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/01/18

DEPT. F49

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Reporter

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PC056481

PEOPLE OF THE STATE OF CALIFORNIA
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JESSE TERRELL (X)

STOLLER LAW GROUP (X)

JEFFREY MALONEY (X) (CC)

NATURE OF PROCEEDINGS:

outlined in the Court's Ruling incorporated herein by reference and attached to this minute order.

Clerk is to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Chatsworth, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: June 1, 2018

Sherri R. Carter, Executive Officer/Clerk

By: _____
M. Henderson

<p align="center">MINUTES ENTERED 06/01/18 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/01/18

DEPT. F49

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JUDGE

M. HENDERSON

DEPUTY CLERK

HONORABLE
#4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

K. JOHNSON, C.A.

Deputy Sheriff

NONE

Reporter

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PC056481

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VS.

Defendant

MAINAK D'ATTARAY (X)

BARTON WAYNE FISHBACK

Counsel

JESSE TERRELL (X)

STOLLER LAW GROUP (X)

JEFFREY MALONEY (X) (CC)

NATURE OF PROCEEDINGS:

DEBORAH J. FOX
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LONG BEACH, CA 90802

JESSE TERRELL ESQ.
P.O. BOX 4760
SUNLAND, CA 91040

STOLLER LAW GROUP
23945 CALABASAS RD., #103
CALABASAS, CA 91302

Dept. F-49
Calendar # 1
Date: 6/1/18
Case #PC056481

MOTION TO MODIFY PRELIMINARY INJUNCTION

MOVING PARTY: P People of the State of California and County of L.A.
RESPONDING PARTY: Ds Barton Wayne Fishback and ABC Waste Management Corp.
NOTICE: ok

RELIEF REQUESTED: An order modifying the Preliminary Injunction granted by the Court on 12/23/15.

SUMMARY OF ALLEGATIONS: MPs/Ps contend the following:

RP/Ds have illegally converted parcels with over 150 acres of undeveloped mountainous terrain along Browns Canyon Road in the unincorporated Oat Mountain area into a dump. Ds deposit and allow to be deposited broken and crushed concrete, brick, demolition and construction debris, as well as construction waste material into the hillside without an approved conditional use permit from the County. Ds have also not secured required grading and excavation permits from the County.

MP/Ps further allege that, despite receipt of administrative notices of violation, final zoning enforcement orders and stop work orders from the County Dept. of Regional Planning and the County Dept. of Public Works directing Ds to stop/abate their violations of the County Code, Ds continue their unpermitted dumping and grading activities. Ds also refuse to comply with the requirements and necessary permitting from other relevant state and local regulatory agencies. Ps contends Ds' unlawful conduct constitutes a public nuisance.

RULING:

The motion is granted, in part, and denied, in part, as set forth below.

The Court declines to conduct a site visit as requested by Plaintiffs.

Ds' Supplemental Opposition filed on 5/14/18 is improper. Contrary to Ds' assertion, the filing is not timely as it was filed after the reply papers were filed by Ps. Additionally, the filing exceeds the 30 page limit for the opposition approved by the Court. Further, there is no authority for Ds' alternative request that the supplemental opposition be treated as a sur-reply.

Ps' Requests for Judicial Notice (RJN) are granted. Ds' RJN is denied as the documents for which judicial notice is requested by Ds are not relevant to the issues before the Court on this motion. For the same reason, Ps' objection to Ds' RJN is sustained.

In December 2015, this Court issued a preliminary injunction which enjoined Ds and their employees, agents, and persons acting with them or on their behalf, from conducting a land reclamation project, as defined by the L.A. County Code by enjoining Ds from depositing and/or allowing to be deposited concrete, brick, demolition, and construction debris, and construction waste material without first securing a conditional use permit (CUP), as well as from performing and allowing to be performed grading and excavation without the required grading and building permits for such work conducted at certain real properties located along Browns Canyon Road (Parcels 30, 31, 23, and 25) in the unincorporated community of Oat Mountain, L.A. County and from any other property within the unincorporated areas of the County. (Ps' RJN filed 3/13/18, Ex.131, 132).

On 5/1/17, the Court clarified its Order on the preliminary injunction. In its 5/1/17 ruling, the Court, among other things, noted that "[t]he term 'deposit' and its derivatives means bringing such [fill] material onto the property." (MP's RJN filed 5/7/18, Ex.138). The Court further noted that "[t]he prohibition against any grading and excavation activity without permits is clear and requires no clarification." Id.

By way of the instant motion, Ps seek a further order modifying the Preliminary Injunction previously issued by the Court to:

(1) Preclude all Class 5 Trucks and above from entering the Subject Properties without pre-approval of the monitor, until Ds have obtained proper County and other state or local permits;

(2) Require Ds to post signs within 30 days advising truck drivers that waste cannot be dumped on Ds' property;

(3) Fine Ds \$500 per truck, or \$20,000 per day, whichever is greater, for violations of the Court's orders;

(4) Appoint a monitor to ensure compliance with orders not to deposit materials, not to dump, and not to grade on the Subject Properties; and to ensure compliance with all terms of this Court's Order;

(5) Require that Ds retain a licensed geotechnical engineer and licensed geologist to submit an engineered grading permit application addressing the hillside stability and erosion control issue within 30 days of entry of this Order, and to submit the needed plans within 30 days thereafter; and

(6) Require that Ds apply for all proper permits for their proposed land reclamation project, including but not limited to, a conditional use permit (CUP) and regular grading permit within 60 days.

The evidence indicates that Ds are violating this Court's order regarding the issuance of a preliminary injunction. The Court's 12/23/15 Order enjoined Ds from depositing and/or allowing to be deposited concrete, brick, demolition and construction debris, as well as construction waste material without first securing a conditional use permit (CUP). The declaration of D Fishback filed in support of the opposition to the instant motion admits that Ds currently accept "three categories of source separate clean construction materials: (i) soil, (ii) broken concrete, and (iii) asphalt." (Fishback Decl. ¶19). At a minimum, the second category of material -- broken concrete -- deposited on the properties violates this Court's order. Ds' argument that they are merely "storing" the materials mentioned, rather than "depositing" them is without merit. As noted above, this Court previously clarified that for purposes of its 12/23/15 Order "[t]he term 'deposit' and its derivatives means bringing such [fill] material onto the property." The Court made no exception for "storing" such materials after they were deposited or brought onto the properties. Ds' violations of the Court's 12/23/15 Order are further supported by the images provided by Ps' in support of the instant motion. (See Miller Decl. ¶¶14-17, Ex.20-22; Perez Decl. ¶¶9, 15-38, Ex.105, 128). As such, Ps have shown the ends of justice would be served by the modification of the injunction. See CCP 533.

Since it appears that the violations are occurring due to heavy trucks entering the subject properties, the preliminary injunction previously issued by this Court is modified to preclude Class 6 Trucks and above from entering the subject properties during the pendency of this action or unless the appropriate permits are obtained (Class 5 trucks and below are not so precluded.) Additionally, Ds are ordered to post signs within 30 days advising truck drivers that waste cannot be dumped on Ds' property and that Class 6 Trucks and above are precluded from entering the properties.

Ds are further ordered to retain a licensed geotechnical engineer and licensed geologist to submit an engineered grading permit application addressing the hillside stability and erosion control issue within 60 days of entry of this Order, and to submit the needed plans within 60 days thereafter. Additionally, Ds are ordered to apply for all proper permits for their proposed land reclamation project, including but not limited to, a conditional use permit (CUP) and regular grading permit within 90 days from the date of this order. Ps have submitted evidence which raises serious concerns regarding the stability of the hillsides and injuries which may result from instability caused by Ds' current activities on the property. (See Miller Decl. ¶¶20-21; Plantz Decl. ¶¶7-10). By applying for the proper permits, Ps will be able to advise Ds regarding steps required to stabilize the hillsides to prevent injuries.

The remaining relief requested by Ps is denied, without prejudice.

Ps' request for the appointment of a monitor or receiver is not properly requested or supported in this motion. The appointment of a receiver is usually made by way of a separate application for such relief, not a request to modify a preliminary injunction. Additionally, Ps have failed to show that they have a probable right or interest in the properties owned by Fishback to warrant appointing a receiver. See CCP 564(b). Also,

Ps do not set forth the qualifications an individual must have to qualify as either a monitor or receiver. Further, Ps have not nominated a potential receiver, submitted an oath of such receiver, etc. See CCP 566; CCP 567; CCP 568.

Ps' request that Ds be fined \$500 per truck, or \$20,000 per day, whichever is greater, for violations of the Court's orders seems to improperly circumvent the laws related to contempt. The law already provides procedures for imposing fines for violations of court orders. See CCP 1209(a)(5); CCP 1218(a).

The Court notes that the opposition contends that Ps' evidence is "tainted and lacks credibility" and is "inadmissible." (See Opp. p.24:20-p.32:18). However, Ds have not filed any objections to the evidence submitted by Ps in support of the motion. As such, Ds have failed to support their conclusory claims.

On the other hand, Ps have filed numerous objections to the evidence submitted by Ds in support of their opposition. These objections have merit. As such, the objections to the following declarations are sustained: (1) Ted Hayes (objections 1-7); (2) Rudolph Johnson (objections 1-3); "Equestrian Community Members" (Juan Herrera, Maria E. Martinez, Miguel Vasquez and Miguel Deniz) (objections 1-5); Artemio Quintero (objections 1-5); Linda Alele (objections 1-4); Mark Stalnaker (objections 1-6); Gerardo Becerra (objections 1-7); Andrea Murray (objections 1-13); Justin Robinson (objections 1-5); Philip Sherman (objections 1-24); Marcela Oliva (objections 1-14); John C. Bollinger (objection to the entire declaration); Barton Wayne Fishback (objections 1-22); and Mainak D'Attaray (objections 2-4). Objection 1 to the D'Attaray declaration is overruled as the copy of the declaration filed with the court is signed.

The Clerk is to give notice.