

TENTATIVE RULINGS

Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
LOREN E. MCMASTER, Judge
T. WEST, Clerk
L. STEWART, Bailiff
May 22, 2003, 02:00

ITEM 20 03AS02608 CLGE GARDENS PRESER COMM ET AL VS. EUGENE BURGER
MGT CORP ET

Nature of Proceeding: OSC RE: TEMP RESTRAINING ORDER
Filed By:

The Court grants plaintiffs' application for a preliminary injunction. During the pendency of these proceedings, Defendants, their agents, attorneys, officers, employees and all persons acting on their behalf or in concert with them are hereby restrained and enjoined from prepaying the mortgage subsidized under the federal program known as Section 236 for College Gardens Apartments located at 7761 College Town Drive, Sacramento California unless and until Defendants comply with the notice and other applicable provisions set forth in Government Code sections 65863.10 and 65863.11.

The Preliminary Injunction shall issue upon Plaintiff posting bond in the amount of \$50,000.

The Court invited briefing on the issue of a bond requirement and amount thereof. Plaintiffs contend that bond should not be required, or if required set in a nominal amount because of their status as indigents. Defendants have given cursory treatment to the indigent status of plaintiffs Ordaz and College Gardens Preservation Committee in a footnote, conceding Ordaz is indigent but asserting the Committee is not. The Committee is made up of residents, most of whom are indigent. The court will consider the Committee an indigent litigant and will focus, as have the parties, on the status of California Coalition for Rural Housing Project.

CCP requires a bond when a preliminary injunction issues. CCP 995.240 provides for certain exceptions. Non profit organizations are not one of the exceptions. The question is whether CCRHP is indigent. The fact that there are no California cases finding a non profit

organization indigent for the purpose of waiving the bond requirements of CCP 529 does not mean that under the appropriate circumstances such a finding would not be made. Those circumstances do not exist here.

CCRHP has learned it does not qualify for a surety bond in the amount defendants sought in their supplemental brief, \$350,000. CCRHP is funded through grants that are allocated to preservation and production of affordable housing. These funds, taking account of overhead, are passed on to affordable housing organizations (Wiener declarations). Although CCRHP does not have other assets, the court cannot find that it is indigent. Plaintiffs have not provided the court with information on members of CCRHP other than CHOC. CHOC acquires property with grants or loans but does not generate or retain profits from its operations (Conk declaration). Like CCRHP it has resources and cannot be found to be indigent.

The amount of bond requested by defendants, \$359,090, is excessive. Plaintiffs have argued that the purpose of the bond is to protect the interests of the parties. Eugene Burger is not a party. The note that matured on May 10, 2003 is to Burger and his wife as individuals and they signed it in their personal capacities. Additional interest payments are the personal responsibility of the Burgers even if defendants make the payments.

Defendants estimate the additional gross rents they would have collected after prepayment to be \$144,000. They also state they will suffer a potential loss of management fees in the amount of \$15,840. They do not explain the loss of management fees. As for the additional rents, defendants had represented in their opposition papers and at oral argument that they would not raise rents for the next 12 months if the court permitted the refinance on May 10, 2003. That argument is inconsistent with their position now that they will lose rental income as a result of not refinancing.

Defendants also argue they will incur attorneys' fees and costs in challenging the preliminary injunction by prosecution of an appeal. Defendants have not explained why they would appeal the injunction now that the note has come due and they must begin the notice process again to refinance the property. The relevant issues already have been extensively briefed and defendants have not adequately explained why they estimate it would take 400 hours to appeal the injunction. Defendants have not explained the estimated \$18,000 in costs.

Bond is set in the amount of \$50,000. Since there is no evidence that the Defendant (as opposed to nonparty Burger) will incur or be liable for additional interest in any amount, much less \$48,500, the

Court declines to consider such in setting the bond. The \$50,000 amount is computed by the court's estimate of additional attorneys fees that may be incurred in the amount of \$35,000 (100 hours at \$350.00 per hour), plus additional costs and expenses that defendants reasonably may be expected to incur related to the issuance of the injunction in an amount of \$15,000.

Plaintiffs shall prepare the formal order.