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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION
2484CV2602D

ADAM BURNS and SHELBY BURNS

v.

SOUTH BOSTON LITHUANIAN CITIZEN'S ASSOCIATION, et. al.

MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Alleging nuisance, among other claims, Plaintiffs seek a preliminary injunction against the South Boston Lithuanian Citizen's Association (SBLCA), a social club on West Broadway in the South Boston neighborhood of Boston, from hosting any events, banquets, or meetings with recorded or live music, an amplification system or dancing.

A party seeking a preliminary injunction must establish both a likelihood of success on the merits of the case and that irreparable harm will result from the denial of the injunction. See Tri-Nel Mgmt., Inc. v. Board of Health of Barnstable, 433 Mass. 217, 219 (2001). A preliminary injunction "[is an extraordinary remedy never awarded as of right,]" Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008), and it "should not be granted unless the [moving party] ha[s] made a clear showing of entitlement thereto," Student No. 9 v. Board of Educ., 440 Mass. 752, 762 (2004). Finally, "[t]he public interest may also be considered in a case between private parties where the applicable substantive law involves issues that concern public interest[s]." Bank of New England, N.A. v. Mortgage Corp. of New England, 30 Mass. App. Ct. 238, 246 (1991).

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To succeed on a claim of private nuisance, Plaintiffs must prove that SBCLA has caused a substantial and unreasonable interference with the Plaintiffs' use of their property. Doe v. New Bedford Housing Auth., 417 Mass. 273, 288 (1994). Based on all the evidence before me, I cannot conclude that Plaintiffs have established a likelihood of success on the merits of their nuisance claim. I find, rather, that the evidence is in equipoise. For example, I do not have any evidence that the noise emanating from SBLCA has exceeded what is legally permissible – 50 or 70 decibels depending on the time of day. On the other hand, I have evidence from neighbors describing intolerable noise levels and vibrations. I have no evidence – such as police reports or the like – that any illegal or drug activity has resulted from SBLCA's events. On the other hand, I have descriptions from neighbors of cigarette butts and broken bottles left behind after SBLCA events and an affidavit averring a "belief" that drug use has taken place in cars in the SBLCA parking lot. Finally, except for allegations regarding rehearsals during the 2023 winter holidays, I do not have evidence of how frequently per week SBCLA hosts events that emanate the noise levels complained about.

While Plaintiffs may well prevail on a more fully fleshed out record, the question of "[w]hether a nuisance exists is factually based" and, on this record, I cannot conclude that Plaintiffs have established a right to injunctive relief. Escobar v. Cont'l Baking Co., 33 Mass. App. Ct. 104, 106 (1992).

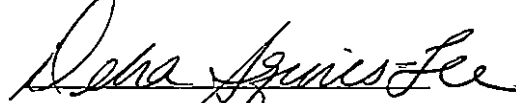
Further, the conduct complained of has been going on since 2022. That fact undercuts the assertion that Plaintiffs will be irreparably harmed in the absence of injunctive relief. See Alexander & Alexander, Inc. v. Danahy, 21 Mass. App. Ct. 488, 494-495 (1986) ("Unexplained delay in seeking relief for allegedly wrongful conduct may indicate an absence of irreparable harm and may make an injunction based upon that conduct inappropriate.")

Finally, the interests of members of the public who have contracted with SBLCA for it to host these events must be considered and I find the public would be negatively impacted.¹ Weighing the balance of harms, together with the general rule that a “preliminary injunction ordinarily is issued to preserve the status quo pending the outcome of litigation[,]” Doe v. Superintendent of Sch. of Weston, 461 Mass. 159, 164 (2011), the Motion must be denied.

ORDER

For the foregoing reasons, Plaintiff’s Motion for Preliminary Injunction is **DENIED.**

SO ORDERED



Debra A. Squires-Lee
Justice of the Superior Court

October 4, 2024

¹ I do not find that SBCLA will suffer irreparable harm which Defendants allege would consist of lost revenue, because loss of money does not ordinarily constitute irreparable harm.