



# Superior Court of California County of Kern

Metropolitan Division  
1215 Truxtun Avenue, Bakersfield, CA 93301

Date: 12/26/2024

Time: 8:00 AM - 5:00 PM

BCV-24-103868

RIO BRAVO COMMUNITY ASSOCIATION, A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION VS  
MONTAGNA HOMEOWNERS ASSOCIATION, A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION

### Courtroom Staff

Honorable: Bernard C. Barmann, Jr.  
Division H

Clerk: Robin L. McDonald

**NATURE OF PROCEEDINGS: RULING ON ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION AGAINST  
DEFENDANT MONTAGNA HOMEOWNERS ASSOCIATION - FILED BY PLAINTIFF; HERETOFORE SUBMITTED  
ON 12/04/2024.**

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The Court finds as follows:

Rio Bravo Community Association (RBCA) seeks a preliminary injunction restraining Defendant from engaging in or performing any act to deprive RBCA, its Members, which consist of Owners and Merchant Builders, from utilizing easements and Common Area in the Montagna Homeowners Association (Montagna) as described in the RBCA Master Declaration ("RBCA CC&Rs") including but not limited to ordering Defendant from depriving RBCA and its Members unfettered usage of easements and Common Area in Montagna Homeowners Association. Defendant contends no injunction should issue.

### Applicable Law re Preliminary Injunctions

"A trial court may grant a preliminary injunction upon a showing that (1) the party seeking the injunction is likely to prevail on the merits at trial, and (2) the 'interim harm' to that party if an injunction is denied is greater than 'the [interim] harm the [opposing party] is likely to suffer if the ... injunction is issued.' (*SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280, [citation] (*SB Liberty*)); see [CCP § 527(a)].) These two showings operate on a sliding scale: '[T]he more likely it is that [the party seeking the injunction] will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue.' (*King v. Meese* (1987) 43 Cal.3d 1217, 1227, [citations] (*King*))." *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1183.

"[T]he burden is on the plaintiff to show harm if the preliminary injunction were not granted. [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, § 376, p. 305 (emphasis added); see also Ernie v.

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Trinity Lutheran Church (1959) 51 Cal.2d 702, 706. "The plaintiff's showing may be by verified complaint alone if the complaint contains the necessary factual allegations. [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, pp. 305-306. As it is difficult to make a sufficient showing through a complaint, "the use of affidavits, either alone or as supplementary to the verified complaint, is desirable." 6 Witkin, California Procedure (4th Ed.), Provisional Remedies,\* 378, p. 306.

CCP § 526(a)<sup>1</sup> provides the grounds for issuing an injunction. Plaintiff has the burden of showing through verified complaint and/or affidavits that it is likely to prevail at trial and failure to provide interim relief will cause irreparable harm<sup>2</sup>. Per CCP § 527 a preliminary injunction can be made on affidavits that satisfactorily show sufficient grounds exist for an injunction. Plaintiff's Complaint is verified.

#### Likelihood of Prevailing on Merits

The more likely it is that Plaintiff will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue.

Plaintiff filed their complaint on November 14, 2024 asserting three causes of action: (1) Breach of the CC&Rs, (2) Injunctive Relief, styled "To Enforce Equitable Servitude", and (3) Declaratory Relief.

Plaintiff contends Casa Club Drive through the Montagna Homeowners Association is RBCA Common Area and

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<sup>1</sup> An injunction may be granted in the following cases:

- (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief . . . consists in restraining the . . . continuance of the act complained of, either for a limited period or perpetually.
- (2) When it appears by the complaint or affidavits that the . . . continuance of some act during the litigation would produce . . . great or irreparable injury, to a party to the action.
- (3) When it appears, during the litigation, that a party to the action is doing, . . . some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.
- (4) When pecuniary compensation would not afford adequate relief.
- (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.
- (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.
- (7) Where the obligation arises from a trust."

<sup>2</sup> "A preliminary injunction is appropriate where a plaintiff is likely to prevail at trial and failure to provide interim relief will cause irreparable harm." *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1808, 1813. "[T]he burden is on the plaintiff to show harm if the preliminary injunction were not granted. [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, § 376, p. 305 [emphasis added]; see also *Ernie v. Trinity Lutheran Church* (1959) 51 Cal.2d 702, 706. "The plaintiff's showing may be by *verified complaint alone* if the complaint contains the necessary factual allegations. [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, § 377, pp. 305-306. As it is difficult to make a sufficient showing through a complaint, "the use of *affidavits*, either alone or as supplementary to the verified complaint, is desirable." 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, § 378, p. 306.

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RBCA would be in the best position to share the cost of repairs amongst its Members as it is required to do so. RBCA CC&Rs Article VI, Section 6.9A provides in pertinent part that: "... the Master Association shall manage and maintain in good condition and repair the Common Area, including, but not limited to, the Common Facilities, Improvements, landscaping, Private streets, monument sign, fences, gates, security system, guard house..."

Defendant contends that in the Conditions of Approval, the City expressly contemplates the Heights and neighboring tracts or the City entering into agreements for constructing and maintaining access roads. None of these provisions mention Montagna (i.e. Tract 5515). Defendant argues that Plaintiff's attempt to force Montagna to allow access to Casa Club Drive merely serves as an end around for the Heights not to comply with the conditions of approval to build alternative access for its tract.

Defendant further contends that even assuming arguendo Montagna is subject to an easement, RCBA's CC&RS do not allow for the RBCA to force Montagna to allow access to the Heights as such right of entry "shall not interfere with the use or occupancy" of Montagna and has not been authorized by Montagna. Casa Club Drive with homes front the road was built to be a residential street for this small community. Transforming Casa Club Drive into a major automobile access route would interfere Montagna's ability to provide a safe community for children and older adults to move about freely. Said another way, the City of Bakersfield would have required Montagna as part of its own Conditions of Approval to have built a wider road if Casa Club Drive were intended to be subject to the volume of traffic RCBA and the Heights seek to force upon it. Thus, the right of entry proposed by RCBA would interfere with the manner in which this portion of Casa Club Drive was designed to be used.

Both parties reference various written conditions for Tract number(s) 5516, 5517, 5997, 5998, and 6243. Plaintiff contends the operative tracts in this case are 5516 and 5517 with immediate emphasis on 5516 - where homes will soon be sold. Defendants contend the City contemplated the Heights entering into agreements with other neighboring tracts for access but made no such proposal for the Heights in Tract 5516 adjacent to Montagna in Tract 5515.

Here, Plaintiff has presented declarations that tend to demonstrate that RBCA has maintained access through Montagna until recently – sometime in August 2024 the access to the gates stopped. Plaintiff is essentially arguing an entitlement to access the common area, including the gates. Plaintiff also contends there is an existing obligation to maintain the common area. (Plaintiff argues this contending there should be no bond requirement).

The relevant tracts here seem to be 5516 and 5517. Defendant contends that in the June 13, 2005, cover letter to the written conditions at Exhibit 4, Bakersfield City Attorney Virginia Gennaro writes "If the conditions of approval are silent on the subject, we suggest you review existing CC&Rs." Condition number 15 provides in pertinent part that "There shall be no through local street connection to De La Guerra Terrace in Tentative Tract 5516." In fact, Condition 15 provides only for emergency vehicular access. This seems to suggest that Plaintiff *cannot* access an alternative route.

Condition 18 of Tract 5516 and Condition 19 of Tract 5517 are conditions that impose prior to ground disturbance an "all weather road" because grading for roads Tracts 5516 and 5517 would require heavy construction equipment. Defendant contends Tract as to 5517 the City made clear that construction vehicles would not be allowed on Casa Club Drive:

Prior to ground disturbance, an all weather road shall be constructed from Miramonte Drive along the Via Napoli/Menaggio Lane alignment to the area of proposed disturbance. This road shall be used by all heavy construction equipment/trucks entering and exiting the project site.

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**Construction vehicles and equipment shall not use Casa Club Drive to enter or leave the site** unless the construction road is blocked due to construction, such as but not limited to installation of improvements for tracts 6243, 5997 and 5998. The applicant shall provide signage to direct equipment and trucks to the Via Napoli entrance and set entrance shall be gated and locked during non work hours. Road surfacing shall be approved by the Public Works and Fire Departments.

Plaintiff is of the impression that only the *City* can enforce this provision and Defendant has no standing to invoke its interpretation on RBCA. Here, the court agrees with Plaintiff. Defendant provides no evidence that the City of Bakersfield has asserted that any party is in violation of the written conditions for any tract at Rio Bravo, yet Defendant wants this court to prevent Plaintiff from enforcing its own rules, which are well documented and supported.

On this basis, Plaintiff has at least some likelihood of success, particularly since there does not appear to be another viable road for access.

#### Irreparable/Interim Harm

In General. It is common to speak of the necessity of a showing of threatened “irreparable injury” as the basis for both preliminary and permanent injunctions. (See *Nicholson v. Getchell* (1892) 96 C. 394, 396, 31 P. 265 [proof of inevitable or certain injury is not required; relief is allowed to prevent great and irreparable injury; reversing judgment on demurrer]; *E.H. Renzel Co. v. Warehousemen's Union I.L.A.* 38-44 (1940) 16 C.2d 369, 373, 106 P.2d 1 [mere allegation, without pleading of facts, of injury is insufficient; reversing order granting preliminary injunction]; *Torrance v. Transitional Living Centers for Los Angeles* (1982) 30 C.3d 516, 526, 179 C.R. 907, 638 P.2d 1304 [plaintiff must plead irreparable injury]; *Intel Corp. v. Hamidi* (2003) 30 C.4th 1342, 1352, 1 C.R.3d 32, 71 P.3d 296, citing the text [“in order to obtain injunctive relief the plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause irreparable injuries, ones that cannot be adequately compensated in damages”]; reversing order granting permanent injunction]; *Lezama v. Justice Court* (1987) 190 C.A.3d 15, 21, 235 C.R. 238 [prerequisites to injunctive relief are inadequate remedy at law and serious risk of irreparable harm]; *Loder v. Glendale* (1989) 216 C.A.3d 777, 782, 786, 265 C.R. 66 [plaintiff must present evidence of irreparable injury]; *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 C.A.4th 415, 431, 21 C.R.2d 303 [preliminary injunction was reversed for failure to show real threat of immediate and irreparable interim harm]; 5 Cal. Proc. (6th), Pleading, § 822; on irreparable harm exception to exhaustion doctrine, see *supra*, § 288; on insufficiency of evidence of illegal expenditure of public funds to show irreparable harm required for preliminary injunction.)

Effect of Delay in Seeking Injunction. A significant delay in seeking injunctive relief does not necessarily indicate an absence of irreparable injury. Delay should be considered merely as one factor bearing on irreparable injury. (*Nutro Products v. Cole Grain Co.* (1992) 3 C.A.4th 860, 866, 5 C.R.2d 41 [alleged 15-month delay did not establish lack of irreparable injury; extent of delay was disputed, and plaintiff had devoted substantial time to discovery, independent market survey, and otherwise obtaining proof of threatened irreparable injury]; on defense of laches.)

(d) [§ 290] Irreparable Injury., 6 Witkin, Cal. Proc. 6th Prov Rem § 290 (2023)

Plaintiff contends RBCA and its Members currently cannot access Casa Club Drive or any street in Montagna Homeowners Association, and a Merchant Builder has provided written notice to Plaintiff of an imminent civil

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complaint for failure to provide such access. RBCA has a duty to all Members of RBCA, including the Merchant Builder and other Owners that have complained about not having access. RBCA has a duty to investigate complaints brought by its members and to enforce such violations.

Plaintiff contends if the Merchant Builder is unable to build and/or sell homes because buyers cannot access their homes resulting from Defendant prohibiting legal access through Casa Club Drive, Defendant exposes RBCA and its Members to substantial damages in addition to the inability to use and enjoy their property rights that exist today, and thus, RBCA and its members are being subjected to irreparable harm.

Defendants argued that the Heights both has alternative access and was required by the City to build alternative access both for construction and the development itself. All the routes mentioned by the City when it approved the tract avoid Casa Club Drive despite Montagna already being in existence at the time the City made its determination. The City contemplated the Heights entering into agreements with other neighboring tracts for access but made no such proposal for the Heights in Tract 5516 adjacent to Montagna in Tract 5515.

However, this alternative access is disputed by Plaintiff in their reply and through photographic evidence introduced in the declaration of Phil Crosby. Defendants argue that Condition number 15 states that "There shall be no through local street connection to De La Guerra Terrace in Tentative Tract 5516." This 'access gate' location at De La Guerra Terrace and Vista Grande Drive is for emergency access only, and De La Guerra Terrace and Vista Grande are private roads within the Rio Bravo Golf Course Master Homeowners Association – a non-annexed separate homeowners association that RBCA has no control over.

Plaintiff contends the 'access gate' location at De La Guerra Terrace and Vista Grande Drive is closed, and Plaintiff has no ability to unlock it, nor is Plaintiff permitted to do so. Plaintiff further contends "Via Napoli Drive to Menaggio Lane" access point, it is not a city approved access point and it is a dirt road that was utilized because all vehicular access through Montagna was terminated on August 19, 2024.

Defendant argues that one Montagna homeowner who owns the Rio Bravo Country Club already built such an alternative access road at his own expense. The construction crews continue to build in the Heights development despite no longer having access via Casa Club Drive. Thus, Plaintiff cannot show that it will suffer irreparable harm.

The court is persuaded that, with no feasible alternative route to the Heights, Plaintiff would be irreparably harmed absent a preliminary injunction. Plaintiff's argument of irreparable harm is more persuasive if the access gates that Defendant contends are available, Plaintiff cannot actually access. Additionally, Plaintiff has conceded that Plaintiff will be financially responsible for maintenance and repair of the roads through the common areas of Montagna such that any additional wear and tear should not result in financial harm to Defendant. Of course, there is other potential non-financial harm to the residents of the Montagna neighborhood that may result from increased traffic on the road through the neighborhood.

Accordingly, the court grants the requested preliminary injunction, subject to the posting by Plaintiff of a reasonable bond, as discussed below.

#### Bond

If a preliminary injunction is granted, the court *must* require an undertaking (CCP § 529), or allow a cash deposit in lieu thereof (CCP § 995.710). [*Stevenson v. City of Sacramento* (2020) 55 CA5th 545, 555, 269 CR3d 604, 611— requirement of filing an undertaking is the "default rule" and applies to actions brought under California Public Records Act (CPRA) even without reference to undertaking in CPRA]

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Because the bond requirement is mandatory, defendant's failure to request a bond does not waive the requirement. [*ABBA Rubber Co. v. Seaquist* (1991) 235 CA3d 1, 10, 286 CR 518, 521] But the bond requirement may be waived or forfeited *by the party to be enjoined*: "Anyone may waive the advantage of a law intended solely for his benefit." [Civ.C. § 3513; see *Smith v. Adventist Health System/West* (2010) 182 CA4th 729, 740, 106 CR3d 318, 328—*implied* waiver or forfeiture found where defendant (party to be enjoined) *consciously chose not to address bond requirement* at preliminary injunction hearing, as part of a *tactical decision* to focus on arguments that would result in preliminary injunction being denied]

Here, Defendant has requested a bond.

Amount of bond: The bond is to cover any damages to the defendant caused by issuance of the injunction, if it is finally determined that plaintiff was not entitled to the injunction. [CCP § 529; see *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 CA4th 474, 478, 125 CR2d 553, 556—purpose is to afford compensation to party wrongly enjoined or restrained]

"[T]he trial court's function is to estimate the *harmful effect* which the injunction is likely to have on the restrained party, and to set the undertaking at that sum." [*ABBA Rubber Co. v. Seaquist* (1991) 235 CA3d 1, 14, 286 CR 518, 523 (emphasis added)—\$1,000 bond inadequate where defendant shows possible lost profits of \$315,000]

A. Injunctions, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 9(II)-A

Plaintiff states that they have a high likelihood of success and its existing obligation to maintain the Common Area allows this court to dispense with a bond requirement, which would be borne by all Members, including Defendant. If the court does set a bond, Plaintiff requests the minimal bond amount. Defendant did not make any written arguments regarding a bond.

The court sets the bond amount at \$5,000. The bond shall serve as security for all claims with respect to this preliminary injunction and any additional injunctive relief order by the court in this action.

### Conclusion

On proof made to the court's satisfaction, and good cause appearing:

IT IS ORDERED that during the pendency of this action Montagna Homeowners Association, and its officers, agents, employees, representatives, and all persons acting in concert or participating with Montagna, are enjoined and restrained from engaging in, committing, or performing, directly or indirectly, by any means whatsoever, any of the following acts:

Engaging in or performing any act to deprive RBCA, its Members, which consist of Owners and Merchant Builders, from utilizing easements and Common Area in the Montagna Homeowners Association as described in the RBCA Master Declaration ("RBCA CC&Rs") including but not limited to ordering Defendant from depriving RBCA and its Members unfettered usage of easements and Common Area in Montagna Homeowners Association.

IT IS FURTHER ORDERED that, before this order shall take effect, plaintiff must file a written undertaking in the sum of \$5,000, as required by Code of Civil Procedure Section 529, for the purpose of indemnifying Montagna for the

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damages as they may sustain by reason of this preliminary injunction if the court finally decides that plaintiff is not entitled to it.

IT IS FURTHER ORDERED that the preliminary injunction as set forth above shall issue on plaintiff's filing a written undertaking in the sum specified above.

The court reserves jurisdiction to modify this injunction as the ends of justice may require.

The court deems the court's minutes as the order of the court. No further order will be required.

Copy of minute order mailed to all parties as stated on the attached Certificate of Service.

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**BCV-24-103868**

**CERTIFICATE OF SERVICE**

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, that I am not a party to the within action and that my business address is 1215 Truxtun Avenue Bakersfield, CA 93301, that I served the **Minutes dated December 26, 2024** attached hereto on all interested parties and any respective counsel of record in the within action, following standard Court practices, by: (a) enclosing true copies thereof in a sealed envelope(s) with postage fully prepaid and depositing/placing for collection and delivery in the United States mail at Bakersfield, California; and/or (b) enclosing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery; and/or (c) by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal ([www.kern.courts.ca.gov](http://www.kern.courts.ca.gov)); and/or (d) electronically transmitting true copies thereof by electronic service or e-mail. Service address(es) are indicated on the attached service list.

Date of Service: December 26, 2024

Place of Service: Bakersfield, CA

Sent from electronic service address: [donotreply@kern.courts.ca.gov](mailto:donotreply@kern.courts.ca.gov)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**Tara Leal**  
CLERK OF THE SUPERIOR COURT

Date: December 26, 2024

By: *Robin McDonald*  
Robin McDonald, Deputy Clerk

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