

<p><b>El Paso County, CO, District Court</b>  Court address: <b>270 South Tejon</b>  <b>Colorado Springs, CO 80903</b>  Phone Number: <b>(719) 452-5000</b></p>	<p><b>DATE FILED:</b> September 24, 2020 10:49 AM  <b>CASE NUMBER:</b> 2019CV32850</p>
<p>AARON LEE SEIGEL and IVY RUTH SEIGEL,  Plaintiffs</p>	<p><b>Court Use Only</b></p>
<p>v.</p>	<p><b>Case Number: 19CV32850</b></p>
<p>KERRY E. BURT and BRADLEY MARVIN BALES</p> <p><b>ORDER GRANTING PLAINTIFFS' MOTION FOR TEMPORARY RELIEF</b></p>	

This matter came on before the Court on September 8, 2020, on the Plaintiffs' Motion for Temporary Relief. The Court, after hearing the evidence and having considered the exhibits and arguments of counsel finds:

1. That the parties entered into a valid Contract and Addendum on or about September 28, 2017. The Contract required that the Plaintiffs obtain approvals for a subdivision which included a special use permit for the racetrack as well as rezoning. Included in the above requirements was a water replacement plan which, by the Contract, the Plaintiffs were to obtain.

2. Shortly after the execution of the Contract, the Plaintiffs filed the application to obtain the necessary approvals. For various reasons, it became clear by March 2018 that professional assistance was needed by the Plaintiffs in pursuing the water rights and ultimately in pursuing the necessary approvals. Accordingly, the Plaintiffs hired counsel Christopher Cummins to obtain the water rights and counsel Jane Fredman to obtain the necessary approvals. By July or August 2019, the water rights were approved. Counsel for the County then needed to approve the rights as well, which did take place by November 2019.

3. By virtue of the Addendum in the Contract, Defendant Burt was required to cooperate in the approval process and grant the Plaintiffs a power of attorney to

process the necessary applications in his name. By November 2019, Defendant Burt withdrew his approval for the Plaintiffs to proceed with the application, resulting in the adjournment of a hearing before the County Planning Commission which was to likely have approved the applications. In doing so, it appears that Defendant Burt breached the obligations in his Contract. Mr. Burt's explanation that the Plaintiffs had not paid rent and such lack of payment justified his conduct withdrawing his approval was not credible. Defendant Bales' rights in the property are subject to those of the Plaintiffs as his deed was not recorded until after the Plaintiffs' Contract was recorded.

**4. Reasonable probability of success.** The Court finds based upon a preponderance of the evidence that Defendant Burt breached his Contract with the Plaintiffs and therefore there is a reasonable probability of success on the merits.

**5. A danger real, immediate and irreparable injury.** The uncontradicted evidence at the hearing was that if the applications are not reinstated and pursued prior to October 30, 2020, that the County will close its file. The consequence of closing its file will require that if the matter is to be further pursued, the Plaintiffs will have to file new applications, pay a new filing fee, estimated to be in excess of \$10,000, and incur additional professional fees and possible additional requirements from County Planning. The Court finds that such consequence amounts to irreparable injury.

**6. No plain, speedy and adequate remedy at law.** The Contract provides that if the Seller breaches the Contract the Plaintiffs may obtain their deposit back. In this case, the return of \$100 will not come close to reimbursing the Plaintiffs for the expenditures they have made which the Court finds by a preponderance of the evidence they have shown per their Exhibits 6 and 7. Plaintiffs have a claim for consequential damages caused by Defendant's conduct in the form of lost anticipated profits for the business. As there is no track record or history of such a business contemplated by the approvals, such damages would be unknown and speculative and therefore unable to be recovered at this time. Thus, the Court finds that the Plaintiffs have no plain, speedy and adequate remedy at law.

**7. Granting the relief will serve the public interest.** The public interest in the state of Colorado is that valid contracts be enforced. Therefore, the Court concludes that granting the relief herein will serve the public interest of the state of Colorado.

**8. The balance of equities favors the relief.** The Court finds and concludes from the testimony that the equities lie in favor of the Plaintiffs and against the Defendant.

**9. The relief will preserve the status quo pending a trial.** Should the relief requested not enter, the Plaintiffs will likely lose their rights to pursue the applications as filed, and granting the relief will preserve the status quo until the trial of this matter in November 2020.

For the foregoing reasons, it is hereby Ordered, Adjudged and Decreed:

1. That Defendant Burt's withdrawal of his consent and approval for the Plaintiffs to process the applications before the County was in breach of his Contract and the Court hereby orders that such applications as filed by the Plaintiffs may proceed to final hearing before the County.

2. That Defendant Bales' rights in the subject property are subject to Plaintiffs' rights.

3. That Defendants are enjoined from interfering in the approval process. The Court will review this matter and determine whether or not the relief requested herein should be made permanent at the trial of this case scheduled to commence November 9, 2020.

Dated this 24<sup>th</sup> day of September, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Thomas J. Kane".

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THOMAS KANE  
DISTRICT COURT JUDGE

