IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KP FIRST AVENUE, L.P., a Pennsylvania Limited Partnership; 935 GENERAL, INC., a Pennsylvania Corporation; J. ANTHONY HAYDEN; WILLIAM E. LOCKE, JR.; FAIRVIEW REALTY INVESTMENTS I, L.P., a Pennsylvania Limited Partnership; BRIAN G. McELWEE, and RICHARD W. IRELAND,	:	**CIVIL ACTION**
Plaintiffs,	:	
v.	:	
PRENTISS PROPERTIES ACQUISITION PARTNERS, L.P., a Delaware Limited Partnership,	:	
Defendant.	:	**NO. 01-1396**

Reed, S.J. **April 26, 2001**

M E M O R A N D U M

This is the case of a real estate development deal gone awry. At the core of the case is a partnership agreement entered into by the parties that contemplated the development and eventual sale of a parcel of land and carried with it the potential for substantial profits. Plaintiffs brought this suit when defendant attempted to sell the property before it had been developed, and they now seek a preliminary injunction to prevent the sale. For the reasons that follow, plaintiffs' request for an injunction will be denied.

Background

This dispute has its origins in plaintiffs' September 1999 purchase of a 14-acre parcel of land located at 935 First Avenue in King of Prussia, Pennsylvania ("the property"). The individual plaintiffs, J. Anthony Hayden, William E. Locke, Jr., Brian G. McElwee, and Richard

W. Ireland, formed a limited partnership, plaintiff K.P. First Avenue, L.P. ("K.P. First Avenue") for the purpose of acquiring the land, and entered into an agreement to purchase the property.

Eventually, plaintiffs sought out a partner for the purposes of developing the land, and defendant Prentiss Properties Acquisition Partners, L.P. ("Prentiss") emerged as the leading candidate. On October 22, 1999, plaintiffs[1] entered into an limited partnership agreement with Prentiss (935 First Avenue Associates Agreement of Limited Parternship, October 22, 1999, Plaintiffs' Exh. 2) ("Agreement"). This Agreement is the epicenter of the parties' dispute.

According to the Agreement, the intent of the parties was "that the Partnership will investigate and plan the future redevelopment of the real property to be acquired by the partnership and ... to pursue such redevelopment." (Agreement, Background, at 1.) The Agreement essentially constituted an exchange of plaintiffs' opportunity to acquire the land for the management and development capability of Prentiss. (Testimony of Peter Monaghan, Hearing on the Motion for Preliminary Injunction, April 11, 2001, at 59.)[2] Prentiss served as the "General Partner" and had the "responsibility to manage the business of the Partnership." (Agreement, § 5.1, at 20.) The Agreement specifically authorized Prentiss to engage in a number of activities, including selling or disposing of part or all of the property, subject to certain limitations. (Id., § 5.1.4, at 21.) As the "limited partners" under the Agreement, plaintiffs' primary entitlement under the Agreement was to a 20 percent residual interest in whatever profits

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[1] The actual signatory to the agreement with Prentiss was the limited partnership created by the individual plaintiffs for the purpose of acquiring the property, K.P. First Avenue. Each of the individual plaintiffs was a member of K.P. First Avenue and the individuals' interests here are inextricably linked with K.P. First Avenue. Therefore, for the sake of simplicity, I will herein refer to "plaintiffs," even when I am discussing only the interest or conduct of K.P. First Avenue.

[2] All of the testimony cited in herein, unless otherwise noted, was presented at the April 11, 2001, hearing on the motion for preliminary injunction.

were generated by the development and sale of the property, along with reimbursement of the monies they had paid out to acquire the property and other sums such as development fees and leasing fees. (Testimony of Peter Monaghan, at 56-57; Testimony of William E. Locke, Jr., at 68-69). The Agreement also afforded plaintiffs various preferred opportunities to purchase the land, including a right of first refusal in the event Prentiss considered selling the property. (Agreement, § 5.2 (i), at 23.)

On March 16, 2001, Prentiss notified plaintiffs by letter that it had received an offer to buy the property from Brandywine Realty Trust, and expressed its desire to accept the offer on behalf of the partnership. (Letter from J. Kevan Dilbeck, Senior Vice President of Prentiss, March 16, 2001, Plaintiffs' Exh. 22.) The sale of the property was part of a broader property "swap" between Prentiss and Brandywine, under which Prentiss sought to exit the real estate market in Pennsylvania, New Jersey and Delaware. ("Existing Asset Swap" Memorandum, Plaintiffs' Exh. 8; "Prentiss Properties Trust and Brandywine Realty Trust Agree to Asset Exchange" Press Release, Mar. 14, 2001, Plaintiffs' Exh. 17; Testimony of Peter Hausmann, at 141.) The letter from Prentiss to plaintiffs provided plaintiffs with notice and an opportunity to purchase the property before proceeding with the sale to Brandywine, as required under section 5.2 of the Agreement. (Agreement, § 5.2 (i), at 23.) Plaintiffs had 10 days to decide under terms of the Agreement. (Id.)

Objecting to the sale and believing that Prentiss had violated the terms of the Agreement, plaintiffs brought this suit and sought a temporary restraining order to prevent the sale. A temporary restraining order issued on March 23, 2001. Prentiss stipulated to the extension of the temporary restraining order until this Court had heard the evidence and arguments and rendered its decision. (Transcript of the Hearing on Motion for Preliminary Injunction, April 11, 2001, at 4.)

This Court heard evidence on the motion for preliminary injunction at a hearing on April 11, 2001, during which the parties presented the testimony of a number of witnesses and submitted numerous documents. Oral arguments on the motion were presented on April 23, 2001.

Analysis[3]

I begin my analysis with a recitation of the familiar four considerations that must be taken into account in assessing whether a preliminary injunction should be granted:

> (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably harmed by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

ACLU v. Reno, 217 F.3d 162, 172 (3d Cir. 2000) (quoting Allegheny Energy, Inc. v. DQE, Inc., 171 F.3d 153, 158 (3d Cir. 1999)). A district court should endeavor to "balance[ ] these four . . . factors to determine if an injunction should issue." ACLU of New Jersey v. Black Horse Pike Regional Bd. of Educ., 84 F.3d 1471, 1477 n.2 (3d Cir. 1996) (en banc). "[T]he burden is clearly on the moving party to prove all elements required for a preliminary injunction" Adams v. Freedom Forge Corp., 204 F.3d 475, 486 (3d Cir. 2000).

[3] Because this action is between parties who are citizens of different states and the amount in controversy exceeds $75,000, this Court has subject matter jurisdiction under 28 U.S.C. § 1332. Federal diversity cases are governed both by federal procedural laws, such as the Federal Rules of Civil Procedure, see Hanna v. Plumer, 380 U.S. 460, 473-74, 85 S. Ct. 1136 (1965) and by the substantive laws of the forum State (here, Pennsylvania) as established by that State's highest court. See Commissioner of Internal Revenue v. Bosch, 387 U.S. 456, 465, 87 S. Ct. 1776 (1967).

1. Reasonable Probability of Success on the Merits

Plaintiffs' likelihood of success on the merits turns on whether they have brought forward substantial evidence that Prentiss breached the Agreement or breached a fiduciary duty owed to the plaintiffs. Plaintiffs argue eloquently concerning the nature of the fiduciary duty, and contend in a compelling fashion that Prentiss breached its fiduciary duty by failing to consult with plaintiffs, failing to keep plaintiffs informed of the progress in getting the necessary approvals for developing the property, concealing from plaintiffs its intention to sell 935 First Avenue to a third party, manipulating its right of first refusal notice to prevent plaintiffs from exercising that right, and generally working at cross purposes with the partnership.[4]

The problem with plaintiffs' fiduciary argument is that it runs smack into exclusionary language that arguably allows Prentiss to do what it did. The Agreement provides that a breach

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[4] Plaintiffs point to handwritten notes take by Prentiss employee Henry C. Gulbrandsen as prima facie evidence of breach of fiduciary duty. The text of those notes includes the following:

> *3) This is "bad faith" offer, a [ ] and way for GP to sell his interest to B'wine!*
>
> *Look A 5.5.4, GP guilty of material breach of fiduciary duty and we're GP.*

(Plaintiffs' Exh. 18, between pp. 22 and 23, Gulbrandsen Notes.) Plaintiffs seek to admit these notes into evidence as proof that Prentiss did in fact act in bad faith. The notes are an out-of-court statement offered for the truth of what they assert, and thus would typically be excluded as hearsay. Plaintiffs, however, contend that the notes constitute an admission of a party-opponent and are thus admissible under Rule 801 (d) (2) (E) of the Federal Rules of Evidence, which allows into evidence "a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." There is no question that Gulbrandsen was an agent or servant of Prentiss at the time he made these notes, and therefore I conclude that the notes are admissible.

Gulbrandsen testified at his deposition that the notes were "my just brainstorming what I could expect the limiteds [plaintiffs] to do." (Deposition Testimony of Henry C. Gulbrandsen, April 16, 2001, at 15.) Thus, according to Gulbrandsen's testimony, the notes were not statements of fact (i.e., that there was indeed bad faith on the part of Prentiss), but an effort to predict the arguments of plaintiffs. Plaintiffs suggest that Gulbrandsen's testimony is not credible. Upon reading Gulbrandsen's deposition, I find his testimony to be credible and his explanation of the notes to be reasonable. Moreover, even if the notes reflected that Gulbrandsen himself believed that Prentiss had acted in bad faith, his impressions alone would not be dispositive of whether Prentiss in fact acted in bad faith. Therefore, I do not find that consideration of the notes conclusively establishes bad faith on the part of Prentiss.

of fiduciary duty does not include "under *any* circumstances *any* decision or determination of the General Partner respecting the development of the Property or *any* planning activities (including *without limitation any* decision not to proceed with any particular activity), which may be at variance with the views of the Limited Partner." (Agreement, § 5.5.4 (i), at 29 (emphasis added).) Facially, the broad language of the Agreement could be interpreted to encompass all of plaintiffs' allegations of breach of fiduciary duty related to the sale, including the failure to consult, the manipulation of the right of first refusal notice, and the failure to keep plaintiffs informed about the necessary approvals. Plaintiffs contend that this exclusionary language does not expressly exclude the sale of property, and therefore does not excuse the conduct of Prentiss in this case. However I conclude that, read broadly, the language could be interpreted to exclude from breach of fiduciary duty a decision to sell the property, even when the limited partner disagrees. I draw no final conclusions as to the meaning of this language today, and only observe that it is not free from ambiguity, and thus does not clearly favor one side or the other.

Accordingly, even assuming that Prentiss did all that plaintiffs allege, I find that the exclusionary language of section 5.5.4 of the Agreement undermines plaintiffs' contention that defendant's conduct constituted a breach of fiduciary duty. Plaintiffs have not borne their burden of convincing me that they have a reasonable likelihood of success on the merits of their contention that the conduct of defendant probably constituted a breach of fiduciary duty under the terms of the Agreement. I conclude that at best, the evidence is in equipoise, and that plaintiffs have not tipped the scales of success in their favor at this time.

2. Irreparable Harm

The most important consideration in this case is whether plaintiffs will suffer irreparable harm if a preliminary injunction does not issue. Plaintiffs argue that if a preliminary injunction is not granted, they will lose an interest in real property, and that the loss of an interest in real property presumptively constitutes irreparable harm under the law, because real property is legally unique.

There is a serious doubt as to whether plaintiffs had an interest in real property here at all. Pennsylvania Statutory law in provides that "[t]he interest of a partner in the partnership is his share of the profits and surplus and that interest is personal property." 15 Pa. C.S. § 8343. In a case interpreting a nearly identical statute from New Jersey, a district court in this circuit held,

> [W]hen a partnership acquires title to real property, the partners, as individuals, do not acquire any real property interest in the property. It is only when a partner, in his or her individual capacity, chooses to purchase the real property from the partnership and title is transferred to said individual that he or she can be said to own, in a legal sense, and thus have acquired that real property.

Grand Street Artists v. General Electric Co., 28 F. Supp. 2d 291, 297 (D.N.J. 1998). I find this reasoning persuasive and adopt it. Under the circumstances of this case, plaintiffs, as limited partners, owned at best a personal property interest in the partnership and the profits and surpluses derived therefrom, not a direct interest in real property. Thus, even if there were a conclusive presumption of irreparable harm where an interest in real property is threatened, there is no threat to an interest in real property in this case.

Moreover, I could find no cases establishing plaintiffs' *per se* rule of irreparable harm in all real property-related cases. Plaintiffs rely on cases that state the proposition that damages to real property are generally unique, and that injuries to real property interests frequently warrant equitable relief. See K-Mart v. Oriental Plaza Inc., 875 F.2d 907, 915-16 (1st Cir. 1989) ("Real estate has long been thought unique, and thus, injuries to real estate interests frequently come within the ken of the chancellor."); J.C. Penney Co. v. Giant Eagle, Inc., 813 F. Supp. 360, 369 (W.D. Pa. 1992) ("damage to interests in real estate are generally viewed as unique"), aff'd, 955 F.2d 217 (3d Cir. 1993); see also Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989); United Church of Medical Center v. Medical Center Com., 689 F.2d 693, 701 (7th Cir. 1982). These cases perhaps suggest a presumption, but do not establish the *per se* rule of irreparable harm that plaintiffs urge on the Court.

A number of cases suggest that there is no such *per se* rule of irreparable harm in real-property-related cases. The Court of Appeals for the First Circuit has observed in the preliminary injunction context that

> 'real estate has long been thought to be unique ... .' Be that as it may, irreparable harm is not assumed; it must be demonstrated. And even where real property is involved, 'speculative injury does not constitute a showing of irreparable harm.'

See Narragansett Indian Tribe v. Guilbert, 934 F.2d 4, 6-7 (1st Cir. 1991) (citations omitted);see also Public Service Co. of N.H. v. Town of West Newbury, 835 F.2d 380, 381 (1st Cir. 1987) (rejecting plaintiff's contention that "any restraint on any interest in real property is per se irreparable injury").

Closer to home, the Court of Appeals for the Third Circuit considered a case brought by a real estate developer who claimed that the county had violated his constitutional rights by failing to issue a building permit. See Acierno v. New Castle Cty., 40 F.3d 645 (3d Cir. 1994). The district court issued a preliminary injunction directing the county to issue a building permit, and the court of appeals reversed on the ground that the developer was seeking only "temporary loss of income."

Despite the fact that the case involved allegations of a substantial interference with an individual's right to manage and use his real property, the court of appeals nowhere mentioned a *per se* rule or even a presumption of irreparable harm in cases involving threats to real estate interests. Instead, the court of appeals engaged in a searching inquiry into irreparable harm, observing, "[W]e think the inquiry into irreparable harm ... must focus on whether money damages can make him whole if his wish to develop the property as a commercial mall is wrongfully delayed." Id. at 654. The court of appeals concluded that the record showed "no more than a potential for purely economic injury to Acierno," and that money damages therefore would be sufficient to compensate plaintiff for any injury he suffered as a result of the defendants' conduct. Id. at 655.

Plaintiffs seek to distinguish Acierno on the ground that it involved a plaintiff's request for a mandatory or affirmative injunction, while plaintiffs here request only a negative injunction. This distinction is unhelpful. Plaintiffs have argued that any injury to a real property interest presumptively causes irreparable harm, and that no further inquiry into irreparable harm is required. In considering irreparable harm in Acierno, a requirement of both negative and mandatory injunctions, the court of appeals did not presume irreparable harm from the fact that plaintiff alleged an injury to real property, and instead engaged in a careful inquiry into whether plaintiffs injury was in fact irreparable.

I conclude that Acierno counsels against a *per se* rule of irreparable harm in cases involving an injury to an interest in land, and instead requires a careful an examination of the nature of plaintiffs' interest here, the potential for injury, and whether monetary damages would be sufficient to assuage such an injury. I now turn to that examination.

The interests of plaintiffs under the Agreement here were described by plaintiff Locke, who testified,

> The interests of the limited partners is to maximize our economic value and benefit in this project. And there are some ancillary issues which previous witness, Peter Monaghan made in light of in terms of his participation in the development of the project but our goal is to make money on this and maximize the amount of money we can make and this – this sale precludes us from doing that ...

(Testimony of William Locke, at 96.) Under the Agreement, plaintiffs did not own a stake in the land itself and had no substantial right to manage, control, use or enjoy the property. Prentiss had reimbursed plaintiffs the monies they had invested to purchase the property, and under the Agreement, the rights and responsibilities for managing and controlling the property were delegated to Prentiss. The central interest and entitlement of the plaintiffs was to the profits that the property might generate. Thus, any injury plaintiffs might suffer as limited partners would be purely economic and compensable through monetary damages.

Plaintiffs, however, urge that their interest is not merely monetary, because under the Agreement, they have a chance to take over management and control of the property. Plaintiffs point to the Agreement's Conversion Option, § 5.5.4, under which they may wrest control and management authority of the property away from Prentiss in the event Prentiss breaches its fiduciary duty.[5] In fact, plaintiffs claimed in open Court that as of 10 a.m. on April 24, 2001, they will have exercised their conversion option and immediately assumed the duties of the general partner under the Agreement. If this is true, as of the drafting of this decision, plaintiffs have the control of the property that they seek. The obvious question under that scenario is:

[5] Section 5.5.4 provides, "If (i) the General Partner shall be guilty of a material breach of fiduciary duty ... [subject to certain exclusions] ... the Limited Partner shall have the right to exercise a 'Limited Partner Conversion Option.'"

Where is the irreparable harm, if plaintiffs are now in control of the property and can prevent a sale from occurring? Plaintiffs respond that they expect Prentiss will object to the exercise of the Conversion Option, which, under the terms of the Agreement, will return the control of the property to Prentiss pending the outcome of an arbitration of their dispute. Thus, it appears that plaintiffs seek the preliminary injunction to prevent Prentiss from selling the property during the pendency of the arbitration of the conversion issue.

The bottom line of this rather confusing conflagration of contingencies is that plaintiffs believe they could possibly gain control of the property through the Conversion Option, and thus enjoy a more direct interest in the property, an injury to which would constitute irreparable harm. However, as discussed above, the fact that this case involves real property does not *per se* lead to a finding of irreparable harm, and therefore I must examine the nature of plaintiffs' interest and the potential injury to it to determine whether there would be irreparable harm in this particular case. Does an injury to the plaintiffs' potential interest in the management and control of the property under the Conversion Option constitute irreparable harm? I conclude that it does not, because the plaintiffs' primary interest in this property, even under the Conversion Option, can be measured in monetary terms.

Even if a conversion were to take place, plaintiffs would merely accede to the rights and responsibilities of the general partner. They continue to hold nothing more than a partnership interest in the property, albeit with greater authority than before. As discussed above, in Pennsylvania a partnership interest is a personal property interest, not an interest in real property. Even under the conversion scenario, then, plaintiffs would hold only a partnership interest, and not a direct interest in real property. Accordingly, the possibility of a conversion under § 5.5.4 of the Agreement does not alter my irreparable harm analysis.

This same point can be illuminated by examining the fundamental motivation of the plaintiffs with regard to the property. The fact is that plaintiffs never wanted to own, manage, control or use this land; they merely wanted the profits from it. They bought the property and immediately turned it over to Prentiss to manage, control and develop it, with the hope of eventually making money on the sale of the improved land. When offered an opportunity to purchase the land, they did not do so. Instead, plaintiffs brought this suit and exercised the Conversion Option. The most obvious inference from the sequence of events and the evidence is that plaintiffs are exercising the Conversion Option not because they want to enjoy the land, but because they want to stop the sale of the property by Prentiss that threatens their potential profits. The Agreement itself indicates that the primary interest of the plaintiffs remains economic even in the event of a conversion; it ensures that "the economic interests of the Limited Partners shall remain unaffected by reason of the conversion." (Agreement, § 5.5.4, at 30.) The Conversion Option thus operates as a means to protect and preserve plaintiffs' prior interests, not a source of a new and more robust real property interest. Even in the event of a conversion, plaintiffs' primary interest and purpose will be the same it has been all along; to make money off the land. I conclude that any harm to that interest may be compensated adequately by monetary damages.

Plaintiffs' alternate position is that a failure to grant a preliminary injunction would irreparably harm their interest in the arbitration of the conversion dispute. Under the Agreement, the parties must arbitrate any dispute over the Conversion Option, and while the arbitration is pending, no conversion may take place. (Agreement, § 5.5.4, at 30.) What this means is that until an arbitration is conducted, Prentiss will remain the General Partner and may proceed with the sale of the property to Brandywine or another suitor. Once the property is sold, the arbitration is rendered moot, and thus, plaintiffs' contend, their right to arbitration could be eviscerated, which would constitute irreparable harm.

The decision of the Court of Appeals for the Third Circuit in Ortho Pharmaceutical Corp. v. Amgen, Inc., 882 F.2d 806 (3d Cir. 1989), is instructive here. There, the court of appeals observed, "in the case of an arbitrable dispute, the district court should apply the traditional test to determine whether the case is an appropriate one to issue injunctive relief." Id. at 813;see also id. at 812 ("[W]e hold that a district court has the authority to grant injunctive relief in an arbitrable dispute, provided that the traditional prerequisites for such relief are satisfied."). Thus, under Ortho, the specter of arbitration alone is not enough to establish irreparable harm; the potential outcome of the arbitration still must satisfy the four-part analysis for preliminary injunctions, including the irreparable harm prong. In other words, plaintiffs must show that the interest that is subject to arbitration is so unique that an injury to it would constitute irreparable harm. I have concluded that an injury to the interest at stake in the arbitration – plaintiffs' right to exercise the Conversion Option – would not be irreparable and could be compensated adequately by money damages. Therefore, I conclude that the pendency of arbitration alone does not establish irreparable harm in this case.

Accordingly, I conclude that plaintiffs have not met their burden of establishing a likelihood that they will be irreparable harmed if a preliminary injunction does not issue.

3. Balancing the Hardships

It is not immediately clear who stands lose more in this case. On the one hand, plaintiffs say they will lose upwards of two million dollars in potential profits from a future sale of the developed property. On the other hand, Prentiss claims it may lose the opportunity to sell the property to Brandywine and thus be forced to continue developing a property in a market that it has exited, and possibly be unable to finance the continued development of the property and thus injure the partnership.

Prentiss presented no evidence that the Brandywine sale was imperiled by the potential of a delay; in fact, Prentiss has repeatedly agreed to extend deadlines in this litigation, and I infer from their flexibility that there is no urgency regarding the Brandywine sale. Likewise, Prentiss did not produce evidence of the difficulty of continuing with development, or that it would be unable to continue to finance the development. Plaintiffs, by contrast, offered testimony concerning their valuation of the property and other perquisites they would be deprived of if the Brandywine sale went through. (Testimony of William E. Locke, Jr., at 68-69.) I conclude that plaintiffs' potential hardship probably outweighs defendant's hardship, and that this element leans in plaintiffs' favor.

4. Public Policy

I can discern from the evidence or arguments no public policy advantage or disadvantage to either party.

Conclusion

The outcome of this motion becomes clear when the factors are balanced against one another. I have concluded that plaintiffs have not borne their burden on the two most important considerations on a preliminary injunction: the likelihood of success on the merits and irreparable harm. The fact that hardships may weigh heavier on plaintiffs cannot swing the outcome in plaintiffs' favor, in light of the fact that I am not convinced that plaintiffs have a reasonable probability of success or will suffer an irreparable injury.

Accordingly, for the foregoing reasons, the motion for preliminary injunction will be denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KP FIRST AVENUE, L.P., et al.	:	**CIVIL ACTION**
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
PRENTISS PROPERTIES ACQUISITION PARTNERS, L.P.,	:	
	:	
Defendant.	:	**NO. 01-1396**

O R D E R

AND NOW, this 26th day of April, 2001, upon consideration of plaintiffs the motion for preliminary injunction (Document No. 14) and the motion of defendant to dissolve the temporary restraining order (Document No. 8), and having held a hearing on April 11, 2001 at which the parties offered evidence and presented testimony, and having heard oral arguments on April 23, 2001, and having concluded, for the reasons set forth in the foregoing memorandum, that plaintiffs have not met their burden of establishing a reasonable likelihood of success or irreparable harm, and that a preliminary injunction is therefore not warranted under on the evidence now in the record, **IT IS HEREBY ORDERED** that the motion for preliminary injunction is **DENIED** and the motion to dissolve the temporary restraining order is **GRANTED** and the temporary restraining order (Document No. 3) is **DISSOLVED**.

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LOWELL A. REED, JR., S.J.