

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

BELLA VISTA UNITED, et al. : CIVIL ACTION
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CITY OF PHILADELPHIA : NO. 04-1014

MEMORANDUM

Padova, J.

May 4, 2004

Presently before the Court is the City of Philadelphia's Limited Motion for Clarification or Reconsideration of this Court's April 15, 2004 Memorandum and Order ("Injunction Order") enjoining the City of Philadelphia ("City"), its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the City, from enforcing § 10-1202(4), § 10-1202(7), and § 10-1203 of the Philadelphia City Code ("Code").

The City seeks clarification that the Injunction Order does not prevent the City from enforcing § 10-501(2)(c) of the Code, which provides that "[n]o person shall post any sign, placard, or circular upon any pole used for attaching or sustaining electric wires." Phila. Code § 10-501(2)(c). In its motion for a preliminary injunction, Plaintiffs sought only to enjoin the enforcement of § 10-1202(4), § 10-1202(7), and § 10-1203. The Injunction Order only addresses the three challenged ordinances, and, therefore, does not apply to, or prevent the enforcement of, any other ordinances in Code, including § 10-501(2)(c). As the scope of the Injunction Order is clear on its face in this respect, its language need not be amended or modified.

The City also seeks clarification that the Injunction Order does not prevent PECO Energy ("PECO"), which is not a party to this litigation, from prohibiting the posting of signs on PECO-owned utility poles. While the Court did specifically discuss PECO-owned utility poles in a footnote to the April 15, 2004 Memorandum, this brief discussion was included for the sole purpose of demonstrating that § 10-1202(7) vests the City with unbridled discretion to determine whether signs may be posted on PECO-owned utility poles. The Court addressed this constitutional infirmity by enjoining the City, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the City from enforcing § 10-1202(7). Plaintiffs maintain that PECO is subject to the Injunction Order as a "person in active concert or participation" with the City. Plaintiffs note that Edward McBride, PECO's Philadelphia County Affairs Manager, testified at the preliminary injunction hearing that PECO gives the City permission to remove signs posted on PECO-owned utility poles. (N.T. 3/30/03 at 178.) Plaintiffs infer from Mr. McBride's testimony that the City is circumventing the Injunction Order by "us[ing] PECO as a vehicle to permit the City to remove signs from utility poles." (Pl Mem. at 5.) However, Mr. McBride's testimony predates the issuance of the Injunction Order. Plaintiffs have not submitted any evidence demonstrating that the City has, subsequent to the issuance of the Injunction Order, conspired with PECO to

circumvent the Injunction Order. Moreover, Plaintiffs do not allege, much less offer evidence, that PECO has received actual notice of the Injunction Order, a prerequisite to binding a nonparty to the terms of an injunction. Accordingly, at this juncture, the Injunction Order does not prevent PECO from prohibiting the posting of signs on PECO-owned utility poles or from otherwise exercising any rights or remedies to which it is lawfully entitled. As the Injunction Order binds only "the City, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the City," its language need not be amended or modified to address PECO's rights or remedies.

The City finally requests that the Court amend the Injunction Order so as to allow the City to enforce the 30-day post-event limitations imposed on temporary signs under § 10-1203(4)(a)-(b) and on political campaign posters under § 10-1202(4)(b), provided that the City does not impose any fines or penalties for unremoved postings. Plaintiffs do not object to the City's proposed amendment. Accordingly, the Court will amend the Injunction Order pursuant to the agreement of the parties.¹

An appropriate Order follows.

¹ The parties resolved the material terms of the agreement during a telephone conference held by the Court on May 3, 2004.

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O R D E R

AND NOW, this 4th day of May, 2004, upon consideration of the City of Philadelphia's "Limited Motion for Clarification or Reconsideration" (Doc. No. 21), and Plaintiffs' Response thereto (Doc. No. 22), **IT IS HEREBY ORDERED** that said Motion is **GRANTED** to the extent that said Motion is consistent with the accompanying Memorandum. The Court's April 15, 2004 Preliminary Injunction Order (Doc. No. 19) is hereby amended to provide, in its entirety, as follows:

1. Pending final resolution of this action on the merits, the City of Philadelphia ("City"), its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the City who receive actual notice of this Order, are hereby **ENJOINED** from enforcing § 10-1202(4) of the Philadelphia City Code ("Code"), except with respect to parkland under subsection (a) of said ordinance, against Plaintiffs and others similarly situated.

2. Pending final resolution of this action on the merits, the City, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the City who

receive actual notice of this Order, are hereby **ENJOINED** from enforcing § 10-1202(7) of the Code against Plaintiffs and others similarly situated.

3. Pending final resolution of this action on the merits, the City, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the City who receive actual notice of this Order, are hereby **ENJOINED** from enforcing § 10-1203 of the Code against Plaintiffs and others similarly situated.

4. This Order does not apply to the extent that the enforcement of § 10-1202(4), § 10-1202(7), and § 10-1203 is addressed by the interim agreement entered into by the parties on the record of the March 30, 2004 hearing.²

5. By agreement of the parties, and notwithstanding the foregoing, this Order does not prohibit the City, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the City who receive actual notice of this Order, from enforcing the following provision:

(a) All temporary signs and political campaign posters

² Pending final resolution of this litigation on the merits, the City has agreed not to enforce § 10-1202(4), § 10-1202(7), and § 10-1203 with respect to private property except as follows: (1) a person cannot pay to post signs on private property; and (2) a person cannot post signs on private property that advertise a service or business located on another property. (N.T. 3/30/04 at 138.) The Court retains jurisdiction to enforce the interim agreement of the parties. (Id. at 139.)

posted on any public property or utility pole must be removed within thirty (30) days after the event to which they relate. No fine or penalty shall be imposed for unremoved signs. The City may remove signs that remain posted after the thirty days have expired.

6. For the reasons set forth in the accompanying Memorandum, the security bond requirement of Federal Rule of Civil Procedure 65(c) is hereby waived.

BY THE COURT:

John R. Padova, J.