

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

MARY DOUGLAS DRYSDALE, and : CIVIL ACTION
DRYSDALE DESIGN ASSOC., INC. :
 :
v. :
 :
DOROTHY WOERTH and GREGORY : NO. 98-3090
K. WOERTH :

FINDINGS of FACT and CONCLUSIONS of LAW

Norma L. Shapiro, J.

September 21, 1998

Plaintiff Mary Douglas Drysdale seeks a temporary restraining order ("TRO") to enjoin defendants, Dorothy Woerth and Gregory K. Woerth, her landlords, from interfering with the photographing of the leased house and garden on Monday and Tuesday, September 21 & 22, 1998. A TRO issued on Friday, September 18, 1998, after a hearing at which both parties were represented by counsel but only plaintiff offered testimony. The following findings of fact and conclusions of law state the reasons therefor.

I. Findings of Fact

1. Plaintiff Drysdale is an individual who has leased the premises owned by the defendants at 267 Coopers Drive, Kirwood, Pennsylvania, for twenty (20) years. The property is also known as "Stone House." Approximately 18 years remain on the lease.

2. The residential lease is for occupancy by the plaintiff, her husband, her son, and pets. It prohibits use of

the premises for business purposes and "alterations" without the written consent of the landlords; it does not prohibit gardening.

3. Drysdale is a noted interior designer who has designed a garden at Stone House. She seeks to have pictures taken of her deck and garden to record the garden beauty and demonstrate her professional skills.

4. A popular national magazine in the field of home and garden design has requested her permission to photograph her garden, deck, and deck chairs for use in a published article about her work. This publicity is without charge to her.

5. The photographer who will take the pictures is available only during the week of September 21, 1998. A garden by nature is temporary and does not remain the same from week to week. The flowers in Drysdale's garden are at their peak and may wither by the end of the week.

6. The photo shoot will take one or two days and will occur during regular business hours. Few vehicles will be used for the shoot, and they may park on the leased premises. The address will not be published with the pictures and no damage to the property will result from the photo shoot.

II. Discussion¹

¹ To the extent the "Discussion" portion of this decision contains findings of fact and/or conclusions of law in addition to those set forth in those sections, such determinations are deemed to be part of those sections even if not expressly stated.

To obtain a TRO, plaintiff must prove four elements: (1) likelihood of success on the merits; (2) irreparable harm; (3) less harm to defendant if the TRO is issued than to plaintiff if no TRO is issued; and (4) the public interest, if any, weighs in favor of plaintiff. Pappan Enters., Inc., v. Hardee's Food Sys., Inc., 143 F.3d 800, 803 (3rd Cir. 1998).

Drysdale has demonstrated that she will likely be successful in her action against defendants for breach of the covenant of quiet enjoyment. In Pennsylvania, a tenant presumptively has an exclusive right to quiet enjoyment of the leasehold. Kelly v. Miller, 94 A. 1055, 1056 (Pa. 1915). This right includes inviting visitors to the premises. 68 PA. CONS. STAT. §250.504-A (1998). The right prevents the landlord from controlling the tenant's use of the property except as specifically limited by the terms of the lease. See, e.g., Pollock v. Morelli, 369 A.2d 458 (Pa. Super. 1976) (breach of the covenant occurs when the landlord interferes with the tenant's use of the property). The landlords cannot prevent Drysdale from inviting a photographer to her property to take pictures of the garden.

Drysdale has demonstrated that she will be irreparably harmed if the photo shoot does not occur on Monday, September 21, 1998. Drysdale seeks pictures of her garden in its present state before the flowers die. Because a garden changes daily, the photo shoot cannot be delayed.

Pictures of a work of art have an aesthetic value that has no precise monetary value but is real nonetheless. The nature of the pictures in terms of free publicity also cannot be easily estimated. Irreparable harm is present if legal damages are uncertain or speculative. Alabama Binder & Chem. Corp. v. Pennsylvania Industr. & Chem. Corp., 189 A.2d 180, 184 (Pa. 1963). Legal damages are inadequate in this case; Drysdale will be irreparably harmed if the photo shoot does not occur as scheduled. But defendants did not demonstrate they would suffer any harm by the issuance of the TRO; the pictures will not include their adjacent premises and the precise address will not be disclosed.

Finally, the public interest weighs in favor of granting the TRO. Pennsylvania has an interest in the enforcement of property rights, including a tenant's rights under a lease. The court finds guidance from Pennsylvania tort law, which holds the tenant liable for injuries to third persons if the landlord has not retained control of the premises because the tenant has primary responsibility for the premises. See Dinio v. Goshorn, 270 A.2d 203, 206 (Pa. 1969). The tenant has a superior right to use of the leased premises, so long as that use does not violate the lease. In the present case, the TRO would further this policy by protecting the tenant's property rights under the lease.

III. Conclusions of Law

1. This court has jurisdiction under 28 U.S.C. §1332 by reason of diversity of citizenship of the parties and the likely amount in controversy.

2. Venue lies in this district because the leased property is within the Eastern District of Pennsylvania.

3. Plaintiff is likely to prove at trial that she had an exclusive right to quiet enjoyment of her property.

4. Defendants may not interfere with access to the premises by plaintiff or other occupants under the lease or their visitors.

5. Plaintiff may not engage in business activities on the premises under the lease; the photo shoot is not a business activity per se.

6. The provision of the lease prohibiting "alterations" without written consent is not implicated.

7. Plaintiff is entitled to pictures of her garden in its present state. The difficulty in quantifying damages to plaintiff if she cannot take a picture of her garden suffices to prove irreparable harm.

8. Defendants have failed to demonstrate that any harm will result to them if the TRO is issued.

9. As landlords, defendants do not have a right to control the use by plaintiff of the leased premises, except as provided in the lease.

10. Pennsylvania has a public interest in protecting rights in land, including a leasehold interest. Pennsylvania also has an interest in protecting the right to quiet enjoyment of a leasehold.

11. A TRO has been issued in favor of the Plaintiff Drysdale by order of September 18, 1998.

Norma L. Shapiro, J.