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8

**FILING FEE EXEMPT
PURSUANT TO GOV. CODE § 6103**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
11

12 CITY OF BURBANK, a municipal)
corporation; and THE PEOPLE OF THE)
13 STATE OF CALIFORNIA, by and through)
14 AMELIA ANN ALBANO, City Attorney for)
the City of Burbank,)

Case No.: 21STCV07923

**NOTICE OF RULING DENYING
DEFENDANT BARFLY, INC.’S MOTION
TO DISSOLVE PRELIMINARY
INJUNCTION AND TO IMPOSE § 177.5
SANCTIONS**

15 Plaintiffs,

16 v.

Assigned to the Hon. Armen Tamzarian
Stanley Mosk Courthouse, Department 52

17 BARFLY, INC., a California corporation;)
18 BARET LEPEJIAN, an individual; LUCAS)
LEPEJIAN, an individual; TALYA)
19 LEPEJIAN, an individual; ISABELLE)
20 LEPEJIAN, an individual; and DOES 1)
through 100, inclusive,)

HEARING

Date: May 28, 2021
Time: 9:30 a.m.
Dept.: 86

21 Defendants.
22)
23)
24)
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26)
27)

Complaint Filed: March 1, 2021
Trial Date: TBD

1 **TO THE COURT AND ALL PARTIES AND ATTORNEYS OF RECORD (IF ANY):**

2 **PLEASE TAKE NOTICE THAT** on May 28, 2021, at 9:30 a.m. in Department 86 of
3 the Los Angeles Superior Court at Stanley Mosk Courthouse, 111 North Hill Street, Los
4 Angeles, California 90012, the Honorable Mitchell L. Beckloff held a hearing on Defendant
5 Barfly, Inc.'s ("Barfly") Motion to Dissolve Preliminary Injunction and to Impose § 177.5
6 Sanctions. Appearing at the hearing via LACourtConnect were Michael M. Lee and Jill Vander
7 Borght, counsel for Plaintiffs City of Burbank (the "City") and the People of the State of
8 California, by and through Amelia Ann Albano, City Attorney for the City of Burbank
9 (collectively, "Plaintiffs"), and Mark Geragos and Kimberly Casper, counsel for Barfly.

10 At the hearing, the Court adopted its tentative ruling denying Barfly's Motion to Dissolve
11 Preliminary Injunction and to Impose § 177.5 Sanctions. Attached hereto as **Exhibit A** is a true
12 and correct copy of the Court's tentative ruling, which the Court adopted on May 28, 2021. The
13 Court ordered counsel for Plaintiffs to give notice. This is that notice.

14
15 DATED: May 28, 2021

Respectfully submitted,

16 AMELIA ANN ALBANO on behalf of the People
17 of the State of California and City Attorney's Office
18 of the City of Burbank

19 By: 

Michael M. Lee
Senior Assistant City Attorney
Attorneys for Plaintiffs CITY OF
BURBANK and THE PEOPLE OF THE
STATE OF CALIFORNIA

EXHIBIT A

DEPARTMENT 86 LAW AND MOTION RULINGS

Case Number: 21STCV07923 **Hearing Date:** May 28, 2021 **Dept:** 86

CITY OF BURBANK v. BARFLY, INC.

Case Number: 21STCV07923

Hearing Date: May 28, 2021

[Tentative] ORDER DENYING MOTION TO DISSOLVE PRELIMINARY INJUNCTION

Defendant, Barfly, Inc., moves the court to dissolve its April 9, 2021 preliminary injunction. The court’s order restrains Barfly from “operating, being open for business, and/or serving any customers or patrons at Tin Horn Flats Saloon/Bar & Grill . . . until Barfly obtains all valid and legally required permits to operate Tin Horn Flats.”

Barfly also requests sanctions of \$100,000—\$10,000 for each of 10 alleged violations of the court’s temporary restraining order—be imposed against Plaintiff, the City of Burbank, pursuant to Code of Civil Procedure section 177.5. Barfly filed its motion only 11 days after the court issued its preliminary injunction.[\[1\]](#)

Barfly contends the preliminary injunction should be dissolved because “the Preliminary Injunction issued against Barfly is moot in light of the reopening of Los Angeles restaurants under the revised Covid-19 protocols . . .” (Motion ii.) Barfly also contends the City has “blatantly violated the terms” of the court’s preliminary injunction requiring sanctions be imposed. (Motion ii.)

The motion to dissolve the preliminary injunction is denied. Barfly has failed to meet its burden on the motion as to both of its requests. Moreover, Code of Civil Procedure section 177.5 caps any sanctions award at \$1,500.

The City’s request for judicial notice is granted.

LEGAL STANDARD

As noted by Barfly, a motion to modify or dissolve a preliminary injunction is governed by Code of Civil Procedure section 533:

“In any action, the court may on notice modify or dissolve an injunction or temporary restraining order upon a showing that there has been a material change in the facts upon which the injunction or temporary restraining order was granted, that the law upon which the injunction or temporary restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order.” (Emphasis added.)

Where “the restrained party later seeks to terminate the restraining order, the burden is on the restrained party to show by a preponderance of the evidence that one of the circumstances set forth in . . . section 533 is present and justifies a termination of the restraining order.” (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1504.)

ANALYSIS

To be clear, the court did not issue its preliminary injunction based on any alleged violation by Barfly of COVID-19 restrictions on businesses issued by the County of Los Angeles. In fact, the court's 12-page April 9 order references COVID-19 twice—to explain the County's revocation of Barfly's health permit and to respond to Barfly's "takings" defense. Instead, this court issued its preliminary injunction because Barfly does not have the required permits to operate a restaurant. The County revoked Barfly's health permit, and the City revoked Barfly's conditional use permit (CUP). Without the permits, Barfly could not legally operate a restaurant. The scope of the court's order merely requires Barfly to comply with the law—Barfly may not operate "until Barfly obtains all valid and legally required permits to operate Tin Horn Flats." (April 22, 2021 order.)

Preliminary Injunction:

Petitioner contends the City's "repeated and flagrantly illegal actions following this court's series of rulings in this case has created exactly the 'significant change in circumstances' contemplated in *Stone v. Trump* and has rendered the preliminary injunctions in this case no longer equitable." [2] (Motion 8:14-16.) Petitioner also argues that the preliminary injunction is moot in light of the reopening of Los Angeles restaurants under the County's revised Covid-19 protocols.

As noted by the City in opposition, the moving papers contain no relevant evidence in support of its motion. [3] (*In re Marriage of Pasco* (2019) 42 Cal.App.5th 585, 591. ["A trial brief is not evidence, it is argument."]) As Barfly relies on changed circumstances as the basis for its motion, not a change in the law, Barfly's failure is fatal to its motion; Barfly has not met its burden as the moving party to show changed circumstances. Thus, the court has no evidence before it to support a claim of changed circumstances.

[In Reply, Barfly states: "Due to an administrative oversight, Barfly's supporting declaration was not filed with this motion. Barfly will remedy this oversight by filing the intended supporting declaration which contains sworn statements as to the authenticity of each exhibit cited in its motion." (Reply 6:24-26.) Barfly, however, did not cure its administrative oversight.]

Nonetheless, even assuming Barfly had submitted competent evidence to support its argument, its mootness argument is unpersuasive. Without regard to the status of any COVID-19 restrictions issued by the County or Governor Newsome, Barfly does not have the necessary permits to operate a restaurant—it does not have a County health permit or a CUP from the City. Barfly cannot legally operate. In fact, the court's preliminary injunction merely precludes Barfly from operating illegally. If Barfly had its permits, the preliminary injunction would not enjoin it from operating. The court order merely requires Barfly to comply with the law.

Barfly may not collaterally attack the County's revocation of its health permit or the City's revocation of its CUP in this proceeding. Unless and until Barfly obtains all necessary licenses and permits to operate, it may not do so. [4]

Sanctions:

Barfly seeks "\$10,000 for each of the 10 violations of the Court's temporary restraining order and April 9, 2021 order pursuant to Code of Civil Procedure section 177.5." (Motion ii.) While Barfly's failure to submit competent evidence to support its burden is fatal to its motion, the court nonetheless addresses the request.

Code of Civil Procedure section 177.5 authorizes the imposition of reasonable monetary sanctions up to \$1,500, "payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification."

Barfly identifies two actions by the City it contends violated orders of this court: (1) the arrest of Defendant Lucas Lepijian and (2) the erection of a perimeter wall around Tin Horn Flats.

First, as a matter of law, the court may only impose a \$1,500 sanction for any violation of a court order. Thus, the maximum possible sanction here is \$15,000.

Nonetheless, Barfly cannot prevail on its request the court impose sanctions on the City because it does not identify any court order prohibiting the City from engaging in either act. That the court would not authorize the City to take certain actions (and the arrest of Barfly's agents and/or employees was never before the court) does not establish a court order prohibiting such action. The City requested certain orders. The court declined to make some of the orders requested.

The absence of a court order authorizing the City to take certain actions is not a court order against such conduct. That is, the City's purported decision to take certain action without a court order does not render it a violation of a court order.^[5] In fact, during the earlier proceedings both this court and Barfly's counsel agreed the City had remedies other than a court order available to it. As a matter of law, the court finds no basis to impose sanctions against the City.

Based on the foregoing, the court need not consider whether and to what extent, if at all, the City's municipal code allowed it to take the actions it has taken against Barfly.

CONCLUSION

Based on the foregoing, the motion is denied.

IT IS SO ORDERED.

May 28, 2021

Hon. Mitchell Beckloff
Judge of the Superior Court

[1] The court announced its order from the bench on April 9, 2021. The court did not actually sign the order until April 22, 2021, two days after Barfly filed this motion.

[2] *Stone v. Trump* (D. Md. 2019) 400 F.Supp.3d 317 involved "equal protection and substantive due process challenges to President Trump's policy regarding transgendered persons' enlistment and service in the military." (*Id.* at 326.) The court found a significant change in circumstances because the underlying policy upon which an injunction had been issued changed. (*Id.* at 333.) *Stone v. Trump* merely addresses the federal requirements to dissolve a preliminary injunction. Those requirements are consistent with Code of Civil Procedure section 533.

[3] That is not entirely accurate; the motion does reference and cite a newspaper article and several of the City's press releases. It also has embedded within it several photographs.

[4] Moreover, there is no competent evidence before the court from which this court could make any kind of determination about either the City or County's revocation of permits. The court cannot determine, for example, "[t]he shut down and the subsequent protocols which Tin Horn was alleged to have violated are no longer the law." (Motion 9:7-8.) On this record, the court cannot make any finding as to the County's revocation of Barfly's health permit.

[5] The City also presents legal argument and evidence that it had the authority—independent from a court order—to take the actions about which Barfly complains. (Opposition 14:1-16:11.)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to this action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On May 28, 2021, I served the foregoing document described as:

NOTICE OF RULING DENYING DEFENDANT BARFLY, INC.'S MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND TO IMPOSE § 177.5 SANCTIONS

(X) **BY ELECTRONIC SERVICE:** by e-mailing the document listed above to the persons at the email addresses listed below, per prior agreement between the parties and/or Code of Civil Procedure section 1010.6(e).

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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 28, 2021, at Burbank, California.



Arvin Setaghaian