

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 502016CA004267XXXXMB

FIVE SOLAS, LLC and
WILLIAM W. PRICE, P.A.

Plaintiffs,

v.

RAM REALTY SERVICES, LLC and
SODIX FERN, LLC d/b/a ALEXANDER LOFTS,

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION
FOR TEMPORARY MANDATORY INJUNCTION**

THIS CAUSE came before the Court for evidentiary hearing on April 22, 25, and 27, and May 2, 2016, upon Plaintiffs, Five Solas, LLC and William W. Price, P.A.'s Motion for entry of a Temporary Mandatory Injunction. The Court has reviewed and considered the Motion, Response, all of the evidence, documents, testimony presented at the lengthy evidentiary hearing, the pleadings and court file, all citations of authority submitted by all parties on all issues, and all argument of counsel for all parties on all issues. Based upon review and consideration of all of the above, the Court makes the following findings of fact and conclusions of law:

I. LEGAL STANDARD

1. Plaintiffs' Motion seeks entry of a temporary mandatory injunction against the Defendants.

2. A temporary injunction is an appropriate remedy where the moving party establishes "(1) [t]he likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest."

Naegele Outdoor Advertising Co., Inc. v. City of Jacksonville, 659 So.2d 1046, 1047 (Fla. 1995) (internal cites and quotes omitted).

3. “The trial court has wide discretion to grant, deny, or modify injunctions, and an appellate court will not interfere with the exercise of this discretion unless some abuse thereof is clearly made to appear; and a presumption exists as to the correctness of a trial court’s ruling, with the burden on the appellant to prove such abuse. *Bailey v. Christo*, 453 So. 2d 1134, 1136 (Fla. 3d DCA 1984) (court has broad discretion to fashion a remedy in equity). Moreover, one critical purpose of temporary injunctions is to prevent injury so that a party will not be forced to seek damages after they have occurred (when the temporary injunction could have prevented the damage). *Id.* at 1137 (affirming granting of temporary mandatory injunction to prevent further or continuing injury).

4. Defendants cite *Grant v. GHG014, LLC*, 65 So. 3d 1066 (Fla. 4th DCA 2010), where the trial court considered entry of a possible temporary mandatory injunction upon evidentiary hearing. Defendants moved for the evidentiary hearing, which was granted by this Court, and an evidentiary hearing is the appropriate procedure for the determination of Plaintiffs’ Motion.¹

5. This Court has the discretion to grant a temporary mandatory injunction requiring immediate action to correct situations which pose a real and substantial danger to the continued vitality of the Plaintiffs’ law firm. *Martin v. Pinellas County*, 444 So. 2d 439, 441 (Fla. 2d DCA 1984) (trial court granted temporary mandatory injunction after evidentiary hearing where evidence showed there was a real and substantial danger to continued vitality).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. This lawsuit involves claims for injunctive relief and trespass to real property between adjoining real property owners.

¹ Plaintiffs have filed a complaint, but Defendants have not yet responded or answered the complaint. The Court has reviewed the complaint as part of making its determination regarding the pending motion.

7. The first property is a multi-story apartment building located at 326 Fern Street, West Palm Beach, Florida, owned and managed by Defendants (the “Alexander Lofts Building”).

8. The second property is a single-story law office building located at 320 Fern Street (just east of the Defendants’ building), owned and operated by Plaintiffs (the “Law Office Building”).

9. On March 3, 2016, a substantial portion of the east brick façade from the Alexander Lofts Building fell onto the roof of the Law Office Building below, breaking all three (3) skylights, penetrating the flat roof of the Law Office Building, and causing structural damage to the Law Office Building. At the time of the collapse, Plaintiff, William Price, was in his law office with his staff. Mr. Price and his entire staff immediately evacuated the building.

10. Later that same day, because of the eminent danger of more of the Alexander Lofts Building’s loose brick façade falling onto the Law Office Building below, the City of West Palm Beach Building Official declared the Law Office Building unsafe, and prohibited its use or occupancy. As a result, Plaintiffs were required to evacuate the Law Office Building and were prohibited from entering or occupying the Law Office Building.

11. Thereafter, Defendants proposed to build a wood structure on the ground, to be flown into place on top of the Law Office Building, for the purpose of the wood structure protecting the covered Law Office Building from further falling debris and the weather elements.

12. Defendants represented the wood structure would provide a *temporary* measure of weather protection and protection from additional falling debris from the Alexander Lofts Building as remediation on the Alexander Lofts Building would occur.

13. On March 15, 2016, Defendants authorized Dосdourian Enterprises, Inc. (“Dосdourian”), a structural and geotechnical contractor, to begin the temporary protection and shoring work at the Law Office Building.

14. Defendants directly hired and paid for Dosedourian, with Plaintiffs having no responsibility other than signing Dosedourian's permit application to begin the work.

15. On or about April 6, 2016, during the Defendants' performance of work on the Alexander Lofts Building, additional bricks fell onto the Law Office Building roof and wood structure, which broke the wood structure causing additional damage to the Law Office Building and resulting in additional brick being added to the already partially collapsed roof.

16. Defendants' contractor removed the additional brick from the top of the temporary wood structure but, for unknown reasons, did not remove any of the remaining brick from the roof of the Law Office Building. When questioned by this Court during the evidentiary hearing, the contractor acknowledged that he had never been directed by Defendants to remove any of the remaining brick from the roof of the Law Office Building.

17. As of April 21, 2016, all the loose brick had been removed from the top of the wood structure and the eastern wall of the Alexander Lofts Building, and the wall pinning required to secure the brick façade was complete, but the wood structure still remained in place over the Law Office Building, as well as the loose brick directly on the roof of the Law Office Building.

18. Further, as of that date, Defendants also had not submitted the required shoring plan to the City of West Palm Beach to allow the seamless start of the shoring work in the Law Office Building, which was necessary for the City to allow re-entry into the Law Office Building to retrieve client files, evidence and the contents of the Law Office Building necessary for Plaintiffs to continue their operation as a law firm.

19. Furthermore, the weight of the loose brick that was still on the roof of the Law Office Building continued to cause the Law Office Building's roof to sag, and cause additional damage to the Law Office Building with each passing day due to the lack of shoring by Defendants.

20. Though the brick façade fell from the Alexander Lofts Building on the roof of the Law Office Building on March 3, 2016, and Defendants admitted that they have fully completed the shoring and protection of their *own* Alexander Lofts Building, Defendants only very recently (on April 28, 2016, after the start of this evidentiary hearing) made efforts to submit a shoring plan to the City.

21. In short, Defendants have not started to perform any of the necessary shoring work on the Law Office Building, and more importantly, have not removed their wood structure from the Law Office Building property, nor removed their bricks from Law Office Building's roof. Nor have Defendants adequately provided an explanation for their delay in taking any efforts on behalf of the Law Office Building.

22. These failures or refusals have prevented the City from allowing Plaintiffs' re-entry to retrieve client files, evidence and contents of the Law Office Building, and have prevented the repair of the roof of the Law Office Building. As a result, this establishes continuing damage to the Law Office Building, the law practice housed therein, as well as posing a very real and substantial threat to the vitality of the Plaintiffs' law practice.

23. Meanwhile, the Defendants continue to perform additional structural and other work on the Alexander Lofts Building for their own benefit, while failing or refusing to address the emergent needs of Plaintiffs caused by Defendants' loose bricks, or to address the problems with the Law Office Building so Plaintiffs can retrieve client files and evidence for their law practice and return to the status quo.

**A. PLAINTIFFS HAVE SATISFIED THE ELEMENTS FOR
ENTRY OF A TEMPORARY MANDATORY INJUNCTION**

As detailed herein, this Court finds that, based upon the substantial and competent evidence presented at the lengthy evidentiary hearing through presentation of several fact and expert witnesses, the Plaintiffs' right to a mandatory injunction is clear and free from reasonable doubt.

1. Testimony of William Price

24. During the evidentiary hearing, Plaintiff, William Price, testified that he is the senior partner of the Plaintiff law firm of William Price, P.A. and the president of Plaintiff, Five Solas, LLC. The Plaintiff law firm has practiced in the Law Office Building for approximately 19 years, and currently has a total of ten employees, nine of which work in the building. This Court finds Mr. Price's testimony to be fully credible and supported by the evidence.

25. The Law Office Building is the sole repository for all law firm documents and client files, and that the lawyers maintain physical evidence in the Law Office Building, all of which are needed for the Plaintiff law firm's practice.

26. On March 3, 2016, Mr. Price was in the Law Office Building marking exhibits for a trial when the Defendants' bricks fell on the building. After Mr. Price realized what had happened, he evacuated his employees from the Law Office Building and called fire rescue, and the City came out and posted a "do not enter" order on the front door of the building.

27. Mr. Price testified that Plaintiffs have only been allowed to enter the back of the building on the south side to retrieve their computer server, but otherwise have been forbidden from entering the Law Office Building by the City since March 3, 2016.

28. Upon direct examination, Mr. Price also testified regarding several photographs depicting the damage to the Law Office Building, which were admitted as Plaintiffs' Exhibits 1A through 1H. In particular:

a. Photo 1A (taken on the date of the March 3, 2016 incident) showed a roof truss still in place – which has since sunken due to the load from the bricks resulting in continuing damage;

b. Photo 1B (taken by a drone on the date of the March 3, 2016 incident) showed the fissure where the Defendants' bricks sliced through the roof of the Law Office Building;

c. Photo 1E (taken approximately 15 days after the March 3, 2016 incident) showed the wood structure that was installed and supposed to be removed after the area was safe and the brick pinning for the Alexander Lofts Building was completed;

d. Photo 1G (taken April 7, 2016 – one month and four days after the initial bricks fell) shows additional brick fell from the Alexander Lofts Building onto the Law Office Building, thereby adding to the load on the roof, and that the movement of the wood structure by that additional falling brick caused damage to an out-building owned by Plaintiffs, which was not previously damaged on March 3, 2016; and

e. Photo 1H (taken April 7, 2016) shows Defendants completely closed off the parking lot for the Law Office Building to use the lot as a staging area for work on the Defendants' own Alexander Lofts Building.

29. Mr. Price also testified that he has noticed that more and more damage is being done to the Law Office Building with the lack of shoring by Defendants and the passage of time. In fact, Mr. Price testified that he believed that the inside of his office is sinking and caving and noted that the center beam had collapsed.

30. Mr. Price also testified that the Law Office Building is the law firm's brand, it is its only location, and that there has been a major drop-off in referrals due to the dislocation of the firm to a temporary, unknown location. He also testified that the inaccessibility to client files and evidence had already caused one continuance already – Plaintiff, William Price, P.A. is largely known as a plaintiffs' contingency based firm – and that evidence in the Law Office Building could

not be used at a recent ongoing trial because he could not access the building to retrieve it. Finally, he testified that he cannot quantify the damages from such occurrences and losses, and that this situation is a very real and substantial threat to the continuing vitality of his law firm.

31. Mr. Price's undisputed testimony clearly establishes the irreparable harm to the Plaintiffs and his law practice.

2. Testimony of Don Beers, P.E.

32. At evidentiary hearing, Plaintiffs' expert, Don Beers, P.E. testified that he has been a professional structural engineer for over 30 years and a licensed general contractor for over 30 years. Mr. Beers was a construction manager for Rinker Materials for 30 years and regularly constructed masonry and cement plants.

33. Mr. Beers was retained by Plaintiffs to review the damage at the Law Office Building on April 19, 2016, after a second portion of the Defendants' brick fell onto the building.

34. Mr. Beers testified regarding certain photographs he had taken during his April 19, 2016 visit to the Law Office Building, which were admitted as Plaintiffs' Composite Exhibit 2. In particular:

a. Photo 2A showed the City's notification that the Law Office Building was deemed unsafe by the City on March 3, 2016;

b. Photo 2D showed an interior load bearing beam for the roof of the Law Office Building had further collapsed since March 3, 2016 (when compared with Photo 1A);

c. Photo 2F showed the entire Law Office Building was closed off by perimeter fencing;

d. Photo 2H showed the brick pinning for the Alexander Lofts Building was largely completed on the east elevation as of April 19, 2016; and

e. Photo 2I showed the Defendants' bricks were still laying on top of the Law Office Building as of April 19, 2016.

35. In addition, Mr. Beers reviewed the City's files and determined that, as of April 27, 2016, no engineering or shoring plan had been submitted to the City by Defendants. Mr. Beers also determined that the temporary wood structure would need to be removed to allow the repair the roof of the Law Office Building, and that it should have only taken 16 hours of engineer time for Defendants to prepare a shoring plan after the Defendants' bricks fell on the Law Office Building.

36. The Court finds Mr. Beers' testimony to be fully credible.

3. Testimony of Bijan Parssi

37. Defendants presented their own expert, Mr. Bijan Parssi, a structural engineer, as an expert witness at the evidentiary hearing. Like Mr. Beers, Mr. Parssi is a long-time structural engineer. Mr. Parssi is also the engineer of record for all of the work on the Alexander Lofts Building.

38. Mr. Parssi testified that:

a. He developed the engineering plan for the brick pinning on the Alexander Lofts Building;

b. Large amounts of brick fell off the Alexander Lofts Building onto the Law Office Building below on both March 3 and April 7, 2016;

c. He prepared the plans for the pinning, but did not prepare any engineering or drawings for work on the Law Office Building, and was not asked to do so by Defendants;

d. The contractor that was performing the Alexander Lofts Building structural repair work determined the schedule and what areas upon which to work;

e. He admitted that he was not asked or told by Defendants to make it a priority to achieve access to Plaintiffs' Law Office Building so the law firm could get its client files, evidence and contents;

f. The brick pinning on the Alexander Lofts Building (which would prevent any more brick from falling onto the Law Office Building) was completed on April 21, 2016;

g. Critically, he testified that he was never asked by Defendants to prepare a shoring plan for the Law Office Building so as to allow re-entry into the building and the retrieval of the client files, evidence and contents of the building; instead, his priority was on the pinning work to Defendants building, and

h. He was never asked by Defendants to determine the fastest way to make the east elevation of the Alexander Lofts Building safe.

4. Testimony of Defendants' Representative, Jim Sopher

39. Defendants presented testimony from their own representative, Jim Sopher, at the evidentiary hearing.

40. Mr. Sopher is the Defendants' representative responsible for hiring contractors to repair and remediate the Alexander Lofts Building and work on the Law Office Building (Dosdourian).

41. At hearing, Mr. Sopher testified that:

a. The brick on the roof of the Plaintiffs' Law Office Building is owned by the Defendants;

b. The wood structure on top of the Law Office Building is owned by the Defendants;

c. Defendants did not hire a shoring contractor until approximately the time when the brick pinning was completed (April 21, 2016) to begin to prepare a shoring plan;

d. Defendants did not hire, request, or authorize Dosedourian to remove Defendants' brick and wood structure from the Law Office Building;

e. Defendants just recently hired Haynes Scaffolding on approximately April 19 or 20, 2016, to start the design of the interior and roof structural shoring work on the Law Office Building;

f. Haynes completed and deliver the proposed shoring plan to Defendants on April 26, 2016;

g. Defendants were not going to perform or pay for the shoring work or removal of the brick because, according to Mr. Sopher, it was not Defendants' responsibility;

h. Defendants did not submit the shoring plan to the City for review until April 28, 2016; and

i. Plaintiffs have agreed to sign the documents required by the City to allow the shoring work to being immediately.

5. Testimony of Sam Dosedourian

42. Mr. Dosedourian is the principal of Dosedourian, the general contractor hired and paid by Defendants to construct and install the temporary wood structure and the shoring of the Law Office Building. Dosedourian is the permit holder for the work performed by Defendants on Plaintiffs' real property.

43. Mr. Dosedourian testified that:

a. He was the one who disclosed to Mr. Price that more of the Defendants' brick had fallen on the wood structure and roof of the Law Office Building on April 7, 2016, and that the wood structure had been compromised by that event;

b. Although the brick pinning has been completed, his company, Dosedourian, has not been hired or paid by Defendants to remove the wood structure or brick from the roof of the Law Office Building;

c. Dosedourian is capable and competent to perform all necessary shoring work on the Law Office Building (sufficient to allow re-entry into the building to retrieve client files, evidence, contents, etc.), of removing the Defendants' temporary wood structure from atop the Law Office Building, and to remove Defendants' fallen brick from the roof of the Law Office Building;

d. Despite the passage of several weeks, the Defendants have not asked him to perform any of the aforementioned tasks;

e. Dosedourian can perform the shoring work on the Law Office Building in approximately 4 to 5 days;

f. The wood structure can be dismantled and flown off the roof of the Law Office Building without delay after the shoring is complete;

g. After the shoring is completed, he has a plan to remove the wood structure and the brick from the roof of the Law Office Building which will then allow safe entry by the Plaintiffs into the building; and

h. Defendants want to keep the wood structure on top of the Law Office Building because Defendants are still performing work on the Alexander Lofts Building, some of which was just determined that it needed to be performed by the structural engineer.

6. Testimony of Ken Conrad

44. The Defendants presented the testimony of Ken Conrad, the City of West Palm Beach building official who has been the primary City official relating to the incidents and ongoing work at both the Alexander Lofts and Law Office Buildings.

45. Mr. Conrad testified that:

a. He placed the notice on the front door of the Law Office Building on March 3, 2016, which prohibited occupancy and entry in the building, and that such restriction has been in place

since that day and will continue until the City approves the necessary interior shoring work needed by the Law Office Building;

b. The City has never prohibited anyone from removing the temporary wood structure or brick from the Law Office Building;

c. Defendants previously told him that they had already removed the brick atop of the Law Office Building, only later did he learn that was not true and that the fallen brick still remains on the roof;

d. Submission, approval and successful performance of a shoring plan was required before the City would allow Plaintiffs to re-enter the Law Office Building to retrieve client files, evidence, and contents because of the unsafe condition without shoring;

e. The City first received a shoring plan from Defendants on April 28, 2016;

f. Today (May 2, 2016) the City expedited review of the shoring plan submitted by the Defendants to shore the entire Law Office Building from the interior with the brick and wood structure, and that the City has approved the Defendants' shoring plan for immediate performance by Defendants or a general contractor of their choosing;

g. The City will issue a commercial miscellaneous permit for the shoring work upon receipt of a signature by the owner (i.e., Five Solas, LLC) on the permit application and submission of Dossdourian's insurance information to the City;

h. Dossdourian is a general contractor capable of performing the shoring plan that has been approved;

i. The City agrees to modify the Dossdourian current building permit to allow Defendants and Dossdourian to remove the brick and wood structure under the existing permit; and

j. Defendants can take normal protective steps to protect the Law Office Building while Defendants continue their work on the Alexander Lofts Building, and that the wood structure can be removed.

III. LEGAL ANALYSIS

46. The facts of this case and the substantial competent evidence presented during the lengthy evidentiary hearing demonstrate that Plaintiffs have satisfied the elements required for issuance of a temporary mandatory injunction.

47. First, Plaintiffs have a clear legal right as the owner and occupants of the Law Office Building to use the building as a law office and to be free from trespass from the neighboring Defendants.

48. Plaintiffs have been and will continue to suffer irreparable harm if a temporary mandatory injunction is not issued which requires Defendants to clear the Law Office Building for entry for purposes of retrieving client files, equipment, evidence, etc. This requires the immediate implementation of a shoring plan approved by the City sufficient to allow Plaintiffs to re-enter the building to retrieve client files, evidence, and contents of the building. There also exists no good reason to continue to leave the wood structure and brick on the roof of the Law Office Building only to allow the potential for continuing and additional damage.

49. Second, the element of lack of an adequate remedy at law is also met by the evidence presented. This action involves Plaintiffs' inability to access and enter their property (the Law Office Building) and to retrieve its contents to run their law practice (including client files, evidence, building contents, furniture and other property inside the Law Office Building). Thus, there are no currently measureable damages that could provide Plaintiffs with an adequate remedy at law.

50. Third, based upon the substantial competent evidence presented during the evidentiary hearing, Plaintiffs have a substantial likelihood of succeeding on the merits because it was Defendants' building components (brick, mortar, etc.) which fell on top of the Law Office Building below through no fault on the part of Plaintiffs.

51. Finally, when appropriate, the Court is required to consider the public interest when determining whether injunctive relief is appropriate. Though the parties are neighboring, private land owners, to the extent the public interest is considered, the pendulum swings in favor of Plaintiffs because issuance of an injunction serves the public interest by allowing Plaintiffs to preserve the client files, matters and evidence, and permit law firm clients' needs to be served by the Plaintiffs.

52. To allow further delay by Defendants is to the detriment of the Plaintiffs business, reputation and their clients, and to wait and see if the roof collapses or water destruction of the interior of the office occurs is unnecessary. This Court can and will prevent irreparable injury to Plaintiffs when such injury cannot be adequately compensated by a monetary award or money damages. As set forth below, Plaintiffs clearly will suffer irreparable harm if the injunction does not issue. Plaintiffs have had to continue one lawsuit and modify one trial because of the interruption caused by the March 3, 2016 incident, relocation of its law practice, and inability to have the client files in its possession at the time of trial.

53. Defendants' wood structure and brick now constitutes a trespass on the property and rights of the Plaintiffs.

54. The relative hardship to Plaintiffs and their clients of not being able to access the building, client files, contents, evidence, furniture, and allowing ongoing and continuing damage to the Law Office Building due to brick and water damage is substantial and, if allowed to continue, would be catastrophic to Plaintiffs' law practice. Plaintiffs have already had to continue one lawsuit

because of the interruption caused by the March 3, 2016 incident, relocation of its law practice, and inability to have the client files in its possession at the time of trial.²

WHEREFORE, BASED UPON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

Because the City will not allow anyone to enter the Law Office Building or remove the necessary client files, evidence, or contents to operate the Plaintiffs' law practice; and

Because until the temporary wood structure and brick is removed from the roof of the Law Office Building, Plaintiffs are unable to mitigate the damage done by the weather elements entering the Law Office Building, the damage to the roof and building by Defendants' falling brick, or to repair the roof and roofing structure and system,

1. Defendants are hereby ordered to contract, pay for, and use their best efforts to: a) structurally shore the interior of the Law Office Building within the seven (7) days to a condition sufficient to achieve clearance from the City of West Palm Beach to allow Plaintiffs to re-enter the Law Office Building to retrieve their client files, evidence, contents, furniture, and other items necessary to run their law practice; b) secure the opening of Plaintiffs' driveway entry into the Law Office Building parking lot to allow Plaintiffs to enter upon the property immediately upon completion of the aforementioned shoring work; c) start to dismantle, remove and haul away the temporary wooden structure sitting atop the Law Office Building immediately upon completion of the aforementioned shoring work; d) start to remove and haul away Defendants' loose brick sitting on top of the roof of the Law Office Building immediately upon completion of the removal of the temporary wood structure; e) before starting any of the aforementioned work, Defendants shall provide proof of liability and workers' compensation insurance coverage showing Plaintiffs as

² While Defendants never requested the posting of a bond, this Court directs Plaintiffs counsel to schedule an immediate hearing on the necessity of a bond. The injunction will become effective immediately upon the posting of such a bond.

additional insureds on Defendants' insurance for such work; and f) take all reasonable measures to mitigate the continuing damage and prevent any additional damage to the Law Office Building during performance of the aforementioned tasks.

2. Plaintiffs are ordered to promptly cooperate in all reasonable respects and to provide the necessary approvals to the Defendants and City to allow the performance of the aforementioned work.

3. The Defendants are ordered to notify the Plaintiffs and this Court upon completion of each stage of the aforementioned work.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 4th day of May, 2016.



MEENU SASSER, CIRCUIT JUDGE

Copies Furnished to:

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