

OHANA v. VALLEY MISHKAN ISRAEL CONGREGATION

EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER

Date of Hearing: **June 15, 2011**
Department: Y

Trial Date: **None Set**
Case No.: LC093832

RULING

GRANT. PLAINTIFF TO FILE A PROPOSED ORDER INCORPORATING THE BELOW REQUIREMENTS BY NOON ON JUNE 16, 2011.

PLAINTIFF TO SERVE DEFENDANT WITH THE COURT'S ORDER BY JUNE 17, 2011 AND TO FILE PROOF OF SERVICE BY JUNE 20, 2011. PLAINTIFF TO POST A \$10,000 BOND BY JUNE 22, 2011.

NEXT HEARING IS SET FOR JUNE 27, 2011 AT 9:00 A.M.

Plaintiff submits the declaration of his counsel, G. Scott Sobel, which shows numerous attempts to notify Defendant Valley Mishkan Israel Congregation of this hearing, through its agent Rita Pauker. Sobel declares that he left a voicemail for Pauker, contacted her former attorney, emailed a friend of hers who had previously communicated email messages to her, and attempted to reach her CPA, who previously communicated faxes to her but has disconnected his phone.

CRC Rule 3.1203(a) states:

A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice.

Plaintiff has taken sufficient actions to comply with CCP §572 and CRC 3.1204 concerning notice. It appears that Pauker is actively evading Plaintiff, and he has done as much as is required under these circumstances. The Court also notes that an attorney claiming to represent Defendant contacted the Court clerk on the morning of the hearing, indicating that Defendant had actual notice of this proceeding.

The Court rules as follows as to the balance of the application:

In order to grant a temporary restraining order, the court needs to consider: (1) who will suffer greater injury from the granting or denial of the injunction; and (2) the probable outcome at trial. See Weil and Brown, *Civ. Proc. Before Trial* (2010) § 9:531, pg. 9(II)-10. This requires the moving party to prove that he will suffer irreparable injury (i.e. inadequate legal

remedy) which is imminent. *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.

Irreparable Injury

The Court assumes that Plaintiff has shown adequate irreparable injury, given evidence submitted concerning the value and significance of the Torah scrolls.

Likelihood of Prevailing on the Merits

FIRST, SECOND, FIFTH AND SIXTH CAUSES OF ACTION - TRESPASS TO PROPERTY, TRESPASS TO CHATTELS, CONVERSION AND NEGLIGENCE

The first, second, fifth and sixth causes of action are for intentional trespass to property, trespass to chattels, conversion negligent trespass.

As noted in *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406:

Trespass is an unlawful interference with possession of property. (*Girard v. Ball* (1981) 125 Cal.App.3d 772, 788 [178 Cal.Rptr. 406].) [] Liability for trespass may be imposed for conduct which is intentional, reckless, negligent or the result of an extrahazardous activity. (*Id.*, at p. 233; *Smith v. Lockheed Propulsion Co.* (1967) 247 Cal.App.2d 774, 784 [56 Cal.Rptr. 128, 29 A.L.R.3d 538].)

CACI 2101 outlines the elements necessary to prove trespass to chattels:

[Name of plaintiff] claims that [name of defendant] wrongfully trespassed on [his/her/its] personal property. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of plaintiff] [owned/possessed/had a right to possess] a [insert item of personal property];

2. That [name of defendant] intentionally [insert one or more of the following:]

[interfered with [name of plaintiff]'s use or possession of the [insert item of personal property];]

[or]

[damaged the [insert item of personal property];]

3. That [name of plaintiff] did not consent;

4. That [name of plaintiff] was harmed; and

5. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.

Finally, as noted in *Spates v. Dameron Hosp. Assn.* (2003) 114 Cal.App.4th 208, 221;

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 543-544, 50 Cal.Rptr.2d 810.)

Here, the Complaint contains adequate facts to support a conclusion that Plaintiff would likely prevail on these causes of action. Plaintiff alleges that Pauker, or someone associated with her, broke into his office and stole four Torah scrolls, which have not been returned. Pauker will apparently contend entitlement to the scrolls as a "pension," or for some other reason, but Plaintiff's evidence shows at this preliminary stage that the taking is unlawful.

The TRO application explains the inconsistencies the Court earlier noted in the Complaint, and indicates that the scrolls were repossessed by agents in Arizona and will be returned to Pauker if they have not been already. Plaintiff submits the declaration of Luke Paul, who confirms that Pauker told him this information over the phone. While hearsay, this evidence is admissible pursuant to Evidence Code §1220. The statements of Officer Yip are still inadmissible hearsay, but the Paul declaration is sufficient for purposes of a TRO. The jurisdictional issue noted by the Court is resolved once the scrolls are in Pauker's possession, which it appears will happen imminently (if it has not already).

Plaintiff has thus shown a likelihood of prevailing on the merits sufficient to warrant issuance of a TRO.

THIRD AND FOURTH CAUSES OF ACTION – CONSPIRACY TO COMMIT TRESPASS TO PROPERTY AND TO COMMIT TRESPASS TO CHATTELS

The Court earlier noted that conspiracy is not a separate cause of action and that Plaintiff had not pled specific facts to show application of the conspiracy doctrine was warranted. See *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-11; Weil and Brown, *Civ. Proc. Before Trial* (2006) §6:154.

However, Plaintiff has shown a likelihood of prevailing on the merits of the claims above, and thus the failure of these two causes of action will not bar the issuance of a TRO.

Plaintiff's application for a temporary restraining order is granted. The writ of possession is denied.

The Court notes that the order submitted by Plaintiff is deficient. Plaintiff is ordered to file a proposed order by noon on June 16, 2011.

Plaintiff is also ordered to serve Defendant with the Court's order by June 17, 2011 and to file proof of service by June 20, 2011. Plaintiff to post a \$~~10~~¹⁵,000 bond by June 22, 2011. The next hearing on this matter is set for June 27, 2011 at 9:00 am.