

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2018-CA-1118
DIVISION: CV-H

CITY OF JACKSONVILLE,

Plaintiff,

vs.

TUSCAN RIVER ESTATE, LLC, a
Delaware Limited Liability Company, and
MICHAEL JOHNIGEAN, individually,

Defendants.

AGREED ORDER GRANTING TEMPORARY INJUNCTION

THIS CAUSE was heard on Plaintiff's Complaint seeking Temporary Injunctive Relief and Memorandum in Support of its Request for Temporary Injunctive Relief, including supporting affidavits. Defendants received verbal and written notice of Plaintiff's Complaint seeking temporary injunctive relief and the March 14, 2018 temporary injunction hearing on or before Friday, March 9, 2018. Defendants received a copy of Plaintiff's Memorandum in Support of its Request for Temporary Injunctive Relief and supporting affidavits on March 13, 2018.

1. Based on the evidence before the Court and argument presented at the hearing, the Court hereby finds a substantial likelihood of success on the part of the City in establishing the following at trial:

a. Defendant Tuscan River Estates, LLC ("Tuscan") owns the property located at 4424 Kelnepa Drive, Jacksonville, Florida, 32207 (RE No. 099301-0000) ("Property") and has since June of 2016. Defendant Michael Johnigean ("Johnigean") manages and controls

Tuscan's operations as they relate to the Property, including but not limited to the operations described herein.

b. Commencing on or before September 2, 2016, Defendants have marketed and leased the Property as an event venue and short term rental. Some, if not all, of the events held at the Property have been gatherings of greater than 50 people. These events have been more numerous, frequent, and disruptive to nearby residents than those of an ordinary residential, single-family dwelling. Defendants have so utilized the Property without applying for or obtaining a Certificate of Use as referenced in Section 656.151, Jacksonville Ord. Code ("Ord. Code"), and without obtaining an assembly permit as referenced in Section 420.212, Ord. Code.

c. The Property is designated under the City's Zoning Code as Residential Low Density 90 (RLD-90). As such, its permissible uses are enumerated in Section 656.305, Ord. Code, and do not include Defendants' use of the property as set forth above. Accordingly, such use constitutes a violation of Section 656.111, Ord. Code, on the part of Defendants.

d. Defendants' failure to obtain a Certificate of Use prior to using the Property as set forth herein constitutes a violation of Section 656.151, Ord. Code, and has denied various City departments, including its Fire and Rescue Department, and opportunity to review the Property and its proposed use to ensure compliance with applicable provisions of the Florida Fire and Prevention Code.

e. Defendants' failure to obtain an assembly permit as referenced in Section 420.212, Ord. Code, prior to utilizing the Property as a "place of assembly" as defined therein constitutes a violation of Section 420.212, Ord. Code. This failure has also denied the City's Fire and Rescue Department the opportunity to establish and enforce a maximum occupancy capacity for the Property, among other requirements of the Florida Fire Prevention Code.

2. The Court further finds that it is in the public interest for the apparent violations set forth above to be temporarily enjoined pending final disposition of this case.

3. When a governmental entity is exercising its police power in seeking injunctive relief, any alternative legal remedy is ignored, and irreparable harm is presumed. *Dispoto v. Marion County*, 969 So.2d 423 (Fla. 5th DCA 2007)

NOW THEREFORE, it is hereby ORDERED as follows:

4. Defendants are hereby enjoined from utilizing the Property for short-term rentals and/or as an event venue. Specifically, Defendants are enjoined from the following:

a. Allowing or permitting the Property to be utilized for weddings or other events involving vendors, security, shuttles, or expected crowds (inclusive of all persons present on the Property) which may exceed 50 persons;

b. Marketing, advertising, or otherwise holding the Property out as an event venue or short-term rental;

c. Entering into agreements with renters of the Property that expressly permit, charge an additional fee for, or otherwise contemplate events being held at the Property; and/or

d. Renting the Property for periods of less than seven consecutive days, provided that any contract allowing renters to vacate the property in less than seven days and thereby owe less than the amount due for seven days of occupancy shall be considered renting the Property for less than seven consecutive days.

5. Paragraph 4 above notwithstanding, Defendants are not enjoined from allowing previously planned weddings at the Property on March 17, 2018, and April 21, 2018 ("Planned Weddings"), provided that the following conditions are satisfied:

a. Neither of the Planned Weddings shall have more than 100 guests at the Property;

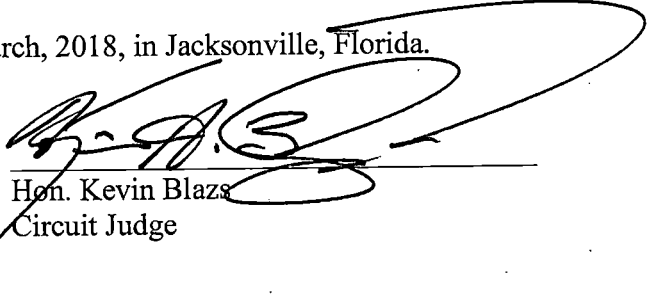
b. Defendants shall hire the Jacksonville Fire and Rescue Department to have safety officer(s) at each of the Planned Weddings as necessary to satisfy the Fire Watch provisions of the Florid Fire Prevention Code;

c. Neither of the Planned Weddings shall involve parking of cars outside the Property's boundaries or the use of any type of shuttles;

d. Defendants shall hire one JSO officer to monitor Kelnepa Drive throughout the duration of each Planned Wedding for speeding, reckless, or otherwise unlawful or disruptive driving or activities; and

e. The Planned Weddings shall otherwise comply with all applicable laws, ordinances, rules, and regulations.

DONE and ORDERED this 14th day of March, 2018, in Jacksonville, Florida.


Hon. Kevin Blaza
Circuit Judge

Copies to:

City of Jacksonville c/o Counsel of Record

Michael Johnnigan, johnnigan@me.com

Tuscan River Estate, LLC c/o Michael Johnnigan, johnnigan@me.com

BY SIGNING BELOW, DEFENDANTS ACKNOWLEDGE THEIR CONSENT TO THE ENTRY OF THIS ORDER AND TERMS CONTAINED HEREIN:

Michael J. Johnnigan
Michael Johnnigan, Individually

Michael J. Johnnigan
Michael Johnnigan
For Tuscan River Estate, LLC