

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,	:	Case No. 2021 CA 004682 B
<i>Plaintiff,</i>	:	
	:	
v.	:	Judge Heidi M. Pasichow
	:	
EXPRESS HOMEBUYERS DC, LLC,	:	
<i>et al.,</i>	:	
<i>Defendants.</i>	:	

**ORDER (1) GRANTING PLAINTIFF DISTRICT OF COLUMBIA’S MOTION FOR
TEMPORARY RESTRAINING ORDER AND (2) GRANTING PLAINTIFF DISTRICT OF
COLUMBIA’S MOTION TO CONVERT MOTION FOR TEMPORARY RESTRAINING
ORDER TO MOTION FOR PRELIMINARY INJUNCTION**

This matter comes before the Court based on (1) the District of Columbia’s Motion for Temporary Restraining Order, filed on December 15, 2021, and (2) the District of Columbia’s Motion to Convert Motion for Temporary Restraining Order to Motion for Preliminary Injunction, filed on January 19, 2022. All parties are represented by counsel.

I. Procedural History

On December 14, 2021, Plaintiff District of Columbia (the “District”) filed a Complaint against Defendants Express Homebuyers DC, LLC (“Express”), Lawrence Bradford Chandler III, and Judson Allen for violations of the Consumer Protection Procedures Act (“CPPA”) and the Home Equity Protection Act of 2007 (“HEPA”). On December 15, 2021, the District filed their Motion for Temporary Restraining Order. On December 28, 2021, Ugo Colella filed a Notice of Appearance of Counsel for Defendants and Defendant Express filed a Rule 7.1 Disclosure Statement. On January 5, 2022, Defendants filed their Opposition to the District’s Motion for Temporary Restraining Order and a Notice and Acknowledgement of Service. Also on January 5, 2022, the District filed their Reply in Support of its Motion for Temporary Restraining Order. On January 19, 2022, the District filed their Motion to Convert Motion for Temporary Restraining Order to Motion for Preliminary Injunction. On January 25, 2022, Defendants filed an O

pposition to the District's Motion to Convert. On January 26, 2022, the District filed a Reply in Support of its Motion to Convert. On January 27, 2022, Defendants filed an Answer to the District's Complaint.

II. Legal Standard

i. Motion for Temporary Restraining Order

The Court will issue a temporary restraining order if it finds that (1) there is a substantial likelihood that Plaintiff will prevail on the merits; (2) Plaintiff is in danger of suffering imminent, irreparable harm during the pendency of the action; (3) more harm will result to Plaintiff from the denial of the injunction than will result to the Defendant from its grant; and (4) the public interest will not be disserved by the issuance of the requested order. *Dist. of Columbia v. E. Trans-Waste of Maryland*, 758 A.2d 1, 14 (D.C. 1999) (quoting *Dist. of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 21 (D.C. 1993)).

ii. Motion for a Preliminary Injunction

A preliminary injunction is an extraordinary remedy, and the trial court's power to issue it should be exercised only after careful deliberation has persuaded it of the necessity for the relief. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 21 (1993 D.C.) (quoting *Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C. 1976)). A proper exercise of discretion requires the trial court to consider whether the moving party has "clearly demonstrated (1) that there is a substantial likelihood he or she will prevail on the merits; (2) that he or she is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to him or her from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order. *See In re Estate of Reilly*, 933 A.2d 830, 834 (D.C. 2007).

III. Analysis

a. The District's Motion to Convert Motion for Temporary Restraining Order to Motion for Preliminary Injunction

i. The District's Motion

In their Motion, the District states that under Superior Court Rule 65(a), a preliminary injunction may be issued when there is notice to the adverse party. Mot. at 1. The District states that the Defendants “have had ample notice and ability to respond to the District’s arguments” and “have substantially responded to the District’s arguments.” *Id.* at 1-2. Therefore, the District requests that the Court “incorporate the parties’ substantive briefing already on file with regard to the Motion for Temporary Restraining Order” and convert the District’s motion into a Motion for Preliminary Injunction. *Id.*

ii. Defendants’ Opposition

In their Opposition, Defendants first argue that the District cannot show that the government or any District consumer will suffer irreparable harm absent an injunction, and “the government has not shown that it gets a special exception because it invoked the [CPPA].” Opp. at 1. Second, Defendants argue that the District’s “lawsuit is entirely unnecessary” because the case arises out of a lawful FOIA request, involved a good faith belief that the D.C. government provided accurate information, and no District consumer has been harmed because Defendants “voluntarily declined to do any business with a District consumer who received Defendants’ mailer.” *Id.* at 2. Third, Defendants argue that the District “appears to be trying to manufacture harm by litigating this case in the court of public opinion, including at least one press story that contains materially false and misleading statements.” *Id.* The Defendants argue that the District leaked this lawsuit to the press and provided an interview to The Washington Informer that “is highly misleading because it omitted the crucial fact that Defendants obtained what they believed to be a ‘delinquent tax roll’ through a lawful FOIA request made to the District.” *Id.* at 2-3. Finally, Defendants state that the District has “received only four consumer complaints related to Defendants’ mailer.” *Id.* at 3.

iii. Analysis

The Court notes that the District filed a Reply to the instant Motion on January 5, 2022; however, the District was not entitled to file such a Reply under Super. Ct. Civ. R. 12–I(g), and thus the Court does not consider it. *See* Super. Ct. Civ. R. 12–I(g) (“Within 7 calendar days after service of the opposing statement, the moving party may file and serve a statement of points and authorities in reply to the

following types of motions only: (1) motions for summary judgment; (2) motions to dismiss for failure to state a claim; (3) motions to strike expert testimony; and (4) motions for judgment on the pleadings.”) Nonetheless, the Court hereby grants the District’s Motion to Convert Motion for Temporary Restraining Order to Motion for Preliminary Injunction. Defendants’ Opposition attacks the merits of granting a preliminary injunction, and not the procedural move of converting the Motion for Temporary Restraining Order into a Motion for Preliminary Injunction. Similarly, Defendants’ claims that the District leaked the story of this lawsuit to the press has no bearing on the merits of this motion. Therefore, the Court finds that it is in the best interest of judicial economy to grant the District’s Motion and convert the Motion for Temporary Restraining Order into a Motion for Preliminary Injunction.

b. The District’s Motion for Preliminary Injunction

i. The District’s Motion

While originally filed as a Motion for Temporary Restraining Order, the Court construes the Motion as a Motion for Preliminary Injunction. *See supra*. In their Motion, the District requests a preliminary injunction that prohibits the Defendants from further violating the CPPA and HEPA and taking any steps to further their foreclosure rescue services, and requires Defendants to provide a list of everyone to which the Defendants sent the allegedly misleading letters. Mot. at 1-2. The District first argues that there is a high likelihood of success on the merits of this claim because “Defendants’ trade practices plainly violate the CPPA and the HEPA.” *Id.* at 5. Defendants’ letter to homeowners (the “Letter”), the District argues, clearly violated the CPPA by falsely implying that the “property at issue [was] in imminent danger of a tax sale,” falsely representing to homeowners that they had past due taxes when they did not, and falsely implying that Express “had sponsorship and/or approval of the District government.” *Id.* at 5-6. The District further argues that Defendants sending “a mass mailing to drum-up business for their services under the false pretense that homeowners were at risk of property-tax related foreclosure,” is a plain violation of HEPA, which “also constitutes a violation of the CPPA.” *Id.* at 6.

Next, the District argues that the balance of equities weighs in the District’s favor because the District “has a significant interest in protecting its residents from illegal foreclosure rescue services and false and misleading advertising,” and “enjoining Defendants from false and misleading advertising and from operating an illegal foreclosure rescue business will not cause them harm.” *Id.* at 6-7. The District also argues that a Temporary Restraining Order—now construed as a Preliminary Injunction (*see supra*)—would serve the public interest by enforcing consumer protection laws, and the fact that the District received four (4) separate complaints regarding Defendants’ Letter “demonstrates the public interest value of enjoining Defendants’ illegal trade practices.” *Id.* at 7.

Finally, the District argues that while they are not required to show irreparable harm, Defendants’ trade practices caused irreparable injury. *Id.* The District argues that “where the government seeks statutorily-sanctioned injunctive relief in an enforcement action to safeguard the public interest, a showing of irreparable harm is not required.” *Id.* To obtain injunctive relief under the CPPA, the District states, the District must believe that a person is violating the CPPA, and the injunction must be in the public interest; the District does not need to prove damages. *Id.* at 8. Even if a showing of irreparable harm was required, the District states that “Defendants’ actions impose a significant risk of imminent injury to District homebuyers who received the letter.” *Id.* The District states that the Letter “may lead to significant distress, overpayment of taxes, or hasty action where none is required,” and that one Letter recipient became upset and had to take a day off from work to review their taxes. *Id.* Therefore, the District argues that their Motion for a Preliminary Injunction should be granted. *Id.* at 9.

ii. Defendants’ Opposition

In Opposition, the Defendants first argue that there is nothing to enjoin because they are taking no action related to the Letter, and therefore the District cannot show that anyone will be harmed. *Opp.* at 5. Defendants state that the District was informed that they provided Defendants an inaccurate list of homeowners who were delinquent on their taxes when Defendants filed a FOIA request, and that Defendants would take no action with any property owner who received the Letter. *Id.* Defendants state that the District was also informed that Defendants would not engage in business transactions with any

person who responds to the Letter and that Defendants would send out a corrective letter to all Letter recipients. *Id.* at 5-6. Based on these facts, Defendants argue, the District, even with the affidavit of one customer, “comes nowhere near meeting the indispensable element of irreparable harm.” *Id.* at 6.

Next, the Defendants argue that the District is not likely to succeed on the merits because the challenged representations are either true or not actionable. *Id.* Defendants state that the phrase “County records indicate you owe past due property taxes” is true based on the information provided by the District. *Id.* at 8. Defendants also state that the phrase “we work with your county courthouse to identify properties with back due taxes” is also true because the point of the FOIA request was to identify “property owners with delinquent taxes.” *Id.* The statements about the property tax foreclosure process in the Letter are statements of law, Defendants argue, and cannot be the basis of a fraud claim. *Id.* at 8-9.

Finally, Defendants argue that the District “cannot meet the final two requirements for obtaining a preliminary injunction – more harm will result from denying an injunction and the public interest is served with an injunction” because Defendants “[are] not now, and will not in the future, take any actions based on the letter.” *Id.* at 9.

iii. Analysis

The Court hereby grants the District’s Motion for Preliminary Injunction. First, based on the existing case law and the plain text of the CPPA, the Court finds that the District is not required to show irreparable harm in order to obtain an injunction. This Court has held that the “the District is not required to prove irreparable harm in seeking injunctive relief under the CPPA” and D.C. Code specifically states that obtaining an injunction for violations of the CPPA does not require a showing of damages. *District of Columbia v. Town Sports Int’l, LLC*, 2020 D.C. Super. LEXIS 78, *11 (Oct. 8, 2020); *see also* D.C. Code § 28-2909(a). Defendants argue that the statute stating that the District does not need to prove damages “does not mean that the CPPA overrides decades of common law precedent,” and that an explicit overruling of common law is required. *Opp.* at 4. However, § 28-2909(a) does affirmatively state that a showing of damages is not required. *See* D.C. Code § 28-2909(a). Furthermore, the statute states that a motion for preliminary injunction must be in the public interest, and that the District must have “reason to

believe” that violations of the CPPA are occurring, which applies to the “likelihood of success” element of a preliminary injunction. *Id.* Affirmatively requiring at least one of the common law elements and not requiring another shows that the common law standard was considered when the statute was drafted, and a decision to not require a showing of damages, therefore, was a conscious change from the common law standard.

Even if the District were required to make a showing of irreparable harm, they have successfully done so. The irreparable harm does not already have to have happened; there must just be a “danger” of irreparable harm for a court to grant a preliminary injunction. *In re Estate of Reilly*, 933 A.2d 830, 834 (D.C. 2007). Here, absent an injunction, there would be nothing stopping the Defendants from doing business with anyone who reaches out to them regarding the Letter, which would certainly cause the homeowner irreparable harm by depriving them of their property.

Next, the balance of equities weighs in favor of granting a preliminary injunction. Defendants state that they have agreed to take no action to do business with anyone who received the Letter and to send out a corrective letter to all Letter recipients. *Opp.* at 5-6. Besides those conditions, the injunction seeks only to enjoin Defendants from actions that violate the CPPA and to make Defendants provide the District with a list of individuals to whom the Letter was sent. *Mot.* at 1-2. Meanwhile, denying a preliminary injunction could lead to a homeowner relying on the Letter and acting with regard to their property in a way that contravenes to their best interest. Defendants have failed to show that they will be harmed by an injunction preventing them from taking further action regarding the Letter and making them give the District a list of all Letter recipients, and therefore the balance of equities weighs in favor of granting a preliminary injunction.

Third, the public interest will be served by granting a preliminary injunction, as it will protect the public from false and misleading advertising. Defendants claim that because they agreed not to pursue any business that may result from the Letter and no homeowners will be harmed, meaning that there is no public interest in issuing an injunction. *Opp.* at 9. However, only the issuance of a preliminary injunction will ensure that the Defendants take no action. Furthermore, as the District states, the DC Office of the

Attorney General received four (4) complaints about Defendants' Letter, which shows that enjoining Defendants from benefitting from the Letter would serve the public interest. Mot. at 7.

The District is also likely to succeed on the merits of its lawsuit. The CPPA is meant to deter "all improper trade practices," and is meant to be "construed and applied liberally to promote its purpose." D.C. Code § 28-3901(b)(1), (c). In its motion, the District claims that the phrase "county records indicate you owe past due property taxes for [property address]" violates D.C. Code §§ 28-3904(e) and (f), which make it a violation of the CPPA to misrepresent as to a material fact which has a tendency to mislead and fail to state a material fact if such failure tends to mislead. Mot. at 8; *see also* D.C. Code §§ 28-3904(e), (f). Defendants claim that this representation was based on information that the District provided. Opp. at 8. However, nothing on the list of properties provided by the District indicated that the properties were past due on their taxes, and none of the four homeowners who complained about the Letter were delinquent on their taxes. Mot. at Ex. 2.

The District also claims that the phrase "we work with your county courthouse to identify properties with back due taxes" violates D.C. Code §§ 28-3904(a) and (b), which make it a violation of the CPPA to represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have and represent that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have, respectively. Here, Defendants argue that this statement is true because the point of the FOIA request was to identify "property owners with delinquent taxes." Opp. at 8. However, submitting a FOIA request and relying blindly on the information provided is not the same as working with the courthouse to identify properties with back due taxes, and Defendants do not allege that they actually worked with any courthouses to locate any records. Therefore, the Court finds good cause to issue a preliminary injunction and hereby grants the District's Motion for Preliminary Injunction.

For updates on DC Superior Court's available resources and protocol in handling the ongoing coronavirus please continue to check: <https://www.dccourts.gov/coronavirus>.

Accordingly, this 22nd day of March 2022, it is hereby

ORDERED that the Defendants' Motion to Convert Motion for Temporary Restraining Order to Motion for Preliminary Injunction is **GRANTED**; it is,

FURTHER ORDERED that the Defendants' Motion for Temporary Restraining Order—construed as a Motion for Preliminary Injunction—is **GRANTED**; it is,

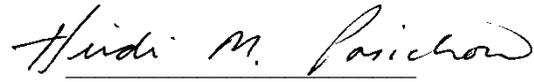
FURTHER ORDERED that a Preliminary Injunction is **ENTERED**, the terms of which are as follows:

1. Defendants are enjoined from creating further advertisements or communications that violate the CPPA,
2. Defendants are enjoined from advertising, promoting, or engaging in for-profit foreclosure rescue services in violation of the HEPA and the CPPA,
3. Defendants are enjoined from taking any steps in furtherance of foreclosure rescue services, including facilitating the purchase of any real property where the owner of the real property received an advertisement or communication from Defendants purporting to inform the owner of past due property taxes,
4. Defendants are required to provide a notice of their illegal activity to all District residents that were sent the false and misleading letter, and
5. Defendants are required to provide the District with a list of names and addresses of all persons who were sent the letter at issue or a letter that made claims regarding past due property taxes in the District (along with copies of any such letters); it is

FURTHER ORDERED that the parties' Initial Scheduling Conference, set for March 25, 2022 is **VACATED and RESCHEDULED** for **April 8, 2022 at 9:30 a.m.**; and it is,

FURTHER ORDERED that, as the parties now qualify for a Praecipe for a Scheduling Order under Super. Ct. Civ. R. 16(b)(2)(A), the Court *strongly encourages* the parties to file a Praecipe **on or**

before April 1, 2022 so that a Scheduling Order may be issued in lieu of the parties' appearance at the April 8, 2022 Initial Scheduling Conference.



Heidi M. Pasichow
Associate Judge

Copies e-served to:

Benjamin Wiseman
Laura C. Beckerman
Counsel for Plaintiff

Ugo Colella
Counsel for Defendant