

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

County of Hennepin,

Court File No.: 27-CV-22-1089
Honorable James A. Moore

Plaintiff,

v.

**ORDER FOR MANDATORY
INJUNCTION**

**Paul Berquist, Benjamin Field Wilson,
Superior Dreams LLC,**

Defendants.

After the hearing on Plaintiff's motion for a temporary injunction, the Court ordered the parties to engage in mediation and to report back to the Court as to the results of the mediation and, in the absence of agreement, to provide the Court with their respective positions as to how to most safely, legally, and quickly move the yacht, Superior Dreams, from its present spot at the public landing. The parties did not reach agreement. The case is now before the Court on the post-mediation submissions of the parties required by the Court's Orders of February 4, 2022 (Index #17) and February 24, 2022 (Index # 28). Since the date of the latter Order, Defendants have filed an Answer and Counterclaim, but no additional evidence or argument has been filed with the Court on the pressing issue of how to most safely, legally, and quickly remove the yacht, Superior Dreams, from the area of the public landing.¹

Based on the files, records, and proceedings herein, the Court makes the following:

¹ Because of routine delays in the processing of filings by Court Administration, Plaintiff's Response to Defendants' Proposal (Index #27), filed with the Court Administrator on February 23, 2022, was not actually received by the Court until after the filing of its Order on February 24, 2022 (Index #28.)

ORDER

1. Within 10 days of the date of this Order Defendants shall move the yacht, Superior Dreams in full accordance with their plan submitted to the Court post-mediation.
2. Defendants are authorized to move the barricades that Hennepin County placed around the yacht to facilitate moving the yacht. The yacht will be attended by Defendants or their contractors at all times after the barricades are moved.
3. The attached Memorandum is incorporated herein.

Dated: March 17, 2022

BY THE COURT

James A. Moore
Judge of District Court

Memorandum

The County has invoked this Courts' jurisdiction and seeks a temporary injunction to abate a nuisance. "A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). A temporary injunction "should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Id.* "The party seeking the injunction must establish that [their] legal remedy is not adequate . . . and that the injunction is necessary to prevent great and irreparable injury." *Cherne Indus., Inc. v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979) (citations omitted). Failure to demonstrate irreparable harm is generally, by itself, a sufficient ground for denying temporary injunctive relief. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. Ct. App. 1990).

The Minnesota Supreme Court has set forth five factors to consider in determining whether or not a temporary injunction should be issued. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965). The five factors to consider are:

- (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
- (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
- (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
- (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
- (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Id. The grant of a temporary injunction “neither establishes the law of the case nor constitutes an adjudication of the issues on the merits.” *Indep. Sch. Dist. No. 35 v. Engelstad*, 144 N.W.2d 245, 248 (Minn. 1966).

a. Great and Irreparable Injury.

As a threshold issue, the County must show that it will suffer great and irreparable injury in the absence of an injunction. The County postulates that this threshold is met by the danger posed by the way the yacht is precariously perched on land that is open to the public. The Court has previously expressed its concern that the yacht and/or the trailer holding it may topple and cause injury. This threat of harm meets the injury threshold of *Cherne*.

b. The nature and background of the relationship between the parties preexisting the dispute.

Here, Hennepin County is a property owner, holding and maintaining land for the benefit and use of the public at large. Defendants are trespassers who have overstayed their welcome on

that public land.² Arguably, the County is also a regulator, and Defendants – allegedly, scofflaws.³ This factor, on the whole, weighs in favor of a temporary injunction. The bottom line is that Defendants left a large, potentially unstable, object on public property without claim of right to do so.⁴

c. The harm to be suffered by Plaintiff if the temporary injunction is denied as compared to that inflicted on Defendants if the injunction issues pending trial.

The potential harm here is immense, but it seems to have somehow been lost in the bickering about who knows more about moving big boats on and off Lake Minnetonka. The County claims, and the Court agrees, that it is quite possible that the yacht will fall and hurt somebody. If that is the basis for the County’s request for injunctive relief, then the sole focus of its evidence and argument should be on moving the yacht quickly to a safe place. But that is not what the County argues. Instead, the County argues that the yacht weighs much more than what the Defendants claim and that moving it on the public roadways requires extraordinary measures, involving a crane and a new trailer to assure compliance with roadway and trailering regulations.⁵ The County’s plan will take longer to implement than Defendants’ plan. It would cost \$70,000.00.

The County’s arguments are incongruous. It’s focus seems to be on danger to the pavement in the event of an accident during a move. That concern, though real, does not amount to “great and irreparable injury” that could support a temporary injunction. The County seems to have lose

² The Court notes Defendants’ argument that they are not trespassers, but captives. As will be seen, the Court finds little merit in Defendants’ claim. The present stalemate is a predictable outcome of Defendants’ irresponsible, underlying behavior.

³ The County asserts claims that it would be illegal for Defendants to transport the yacht on public roads on the current trailer. The record does not establish whether any portion of the route from where the yacht sits to where Defendants hope to take it falls on County roads. If so, then then the County may, indeed, be a regulator. If not, then the County’s claim of impending illegal transport is a claim that they lack standing to pursue in this civil litigation. Defendants, of course, take issue with the County’s interpretation of the applicable weight limits (and also with the purported weight of the yacht itself.) The many factual issues presented here are not determinative of the issue of whether a temporary injunction should issue, and the Court leaves them for another day.

⁴ Again, the Court notes that Defendants will argue necessity but, as will be seen, the Court is skeptical of a claim of necessity that is predicted on underlying negligence.

⁵ The risk of harm to the public is not dependent on whether the yacht weighs 45 tons or 29 tons.

sight of the fact that Defendants propose to move the yacht in the middle of the night, at slow speed, with escort, to a location a few short blocks from where it now stands. Is this a question of imminent danger of collapse or a question of adherence to weight regulations?

Still, despite the County's misplaced arguments, the Court is concerned that the yacht needs to be moved from the public landing soon. Predictably, it is starting to get warmer. The boating season will soon be upon us.⁶ The yacht needs to be moved so that the public can safely enjoy access to the lake afforded by the County's landing and parking lot.

On the other side of the equation, any harm to Defendants occasioned by an order to move the yacht is entirely of their own making. Defendants have always planned to remove the yacht from the lake and to repurpose it elsewhere. They do not intend to push the yacht back into the lake at ice out and thereby avoid the storage costs that they might otherwise have incurred at a local marina. The yacht is out of the lake and is headed somewhere else. How it gets to its ultimate destination is not today's concern. The only concern is getting it to a place where it can be safely stored. Defendants' actions that led to the present situation are analyzed below, but on this factor, the Court finds that the harm they might suffer as a result of a temporary injunction is negligible.

d. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.

This factor counsels in favor of a temporary injunction. In the end, the County is entitled to have the yacht moved from its property and, to that extent, it is likely to prevail in this litigation. It is really only a question of the timing that calls for the potential exercise of the Court's injunctive power. The parties agree that the goal now is to get the yacht off the public land and away from the lake without dropping it on some innocent bystander or

⁶ "Soon" is a relative term and the Court uses it advisedly.

spilling fuel into lake. The question is, how do we accomplish that? The question of who should pay for it, while important to the parties, is unimportant to the Court in the present analysis. For the purposes of this *Dahlberg* factor, there is no disagreement.

e. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.

This *Dahlberg* factor is, perhaps, the least underutilized. It is a rare case where public policy predominates over the interests of the private parties involved in litigation. But here, we find a unique case where public policy and the underlying interests of the public dominate the analysis.

Plaintiff argues that the yacht was dangerously removed from the lake and precariously stored on its property. The Court agrees.

Defendants offer a counter narrative—that they acted with laudable dispatch to address an older yacht that was taking on water in December and pulled it from the lake, just in time to avoid an environmental crisis. Defendants’ short-sighted, and narrow-minded view of the facts finds no purchase with the Court. Defendants’ arguments cast themselves as heroes in the drama. At this early stage of the litigation, the Court sees no reason to grant them that status.

Defendants had a yacht on Lake Minnetonka that they knew was old, that needed care, and, predictably, a safe place to winter. On the record before the Court, they failed to take reasonable and necessary steps to address any of those predictable issues. Instead, when the predictable happened they jury-rigged a way to pull the yacht from the lake with no apparent plan on what would happen next. Now, they claim to be experts in such matters, but the history of this case belies their assertion.⁷

⁷ Defendants argue that their plan to move the yacht to Mr. Bergquist’s property comports with all legal requirements. At this juncture, the Court makes no such findings. The yacht needs to be moved whether the short transport is in technical compliance or not.

f. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

The final *Dahlberg* factor weighs slightly in opposition to the grant of a temporary injunction. Given the petulant and uncompromising positions of both parties in this case, the administrative burden on the Court in enforcing this Order is likely to be weighty. The Court expects that, at a minimum, the parties will be back before the Court with disagreements about how to implement this Order.⁸ The burden on the Court, though, pales in comparison to the harm to the public if the Court fails to step into the breach and orders that commonsense prevails.

Get that yacht moved.

J.A.M.

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⁸ The issuance of a temporary injunction is also immediately appealable. Minn. R. App. Pro. 103.03(b).