

**Windermere Marina Association, Inc.,
Kenneth R. Wynne, W. T. Womble, Sandy
Nielson, Dirk Hoekstra, and Lisa Hutson,**

Plaintiffs,

v.

**Windermere Oaks Property Owners
Association, Inc.,**

Defendant.

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IN THE DISTRICT COURT

BURNET COUNTY, TEXAS

Burnet County - 33rd District Court

__th JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

On this day, the Court considered Plaintiffs’ Verified Original Petition and Application for Temporary Restraining Order (“Application”). Based on Plaintiffs’ verified Application, the Court makes the following findings and orders:

1. The Court finds that Plaintiffs provided notice to Defendant Windermere Oaks Property Owners Association, Inc. (“WOPOA”) by delivering a copy of the petition and application to WOPOA’s attorney.

2. Based on Plaintiff’s verified Application and the exhibits attached thereto, the Court finds as follows:

- a. Plaintiff Windermere Marina Association, Inc. (“WMA”) and its members own and operate two marinas located on Lake Travis.
- b. WMA leases the property on which the marinas sit from the Lower Colorado River Authority (“LCRA”) pursuant to a 15-year lease entered into on August 18, 2008, which followed a prior 15-year lease that WMA and the LCRA entered into on April 1, 1992.
- c. The marinas are anchored to the shore via a cable anchoring system, and receive power through electrical lines running to an electrical box on the

shore. WMA members access the marinas via a gangplank running from the marinas to the shore.

- d. Except in times of severe drought, when the marinas are temporarily relocated, the marinas' cable anchor connection points, the electrical box, and the landward end of the gangplank sit on property that lies to the west of the Windermere Oaks boat ramp, and have done so for over 35 years. Until 1992, this property was part of a larger tract of property owned by the LCRA that also included the tract that the LCRA leases to WPA.
- e. On April 2, 1992, the LCRA severed this larger tract by conveying to WOPOA a five-acre tract on which the anchor connection points, electrical box, and landward end of the gangplank sit. WOPOA designated the tract as Common Area under WOPOA's restrictive covenants.
- f. WOPOA's restrictive covenants grant each Windermere Oaks lot owner "a right and easement of enjoyment as well as an easement of ingress and egress in, to and over the Common Area." Further, although the restrictive covenants expressly permit the marina and any related facilities to be in the common area, stating, "No boat docks, piers, boat lifts, ramps, boat houses, floats, swim platforms or other structures shall be permitted in the lake, on any lake front lots or any area adjacent to the Subdivision or in any Common Area **except (i) in the marina leased from the [LCRA] and related facilities existing from time to time.**" (emphasis added)
- g. The marinas require electricity in order to lower the slips (and the boats thereon) into the water, and to provide the overnight lighting required by LCRA regulations for marinas.

- h. WOPOA, in a February 29, 2016 letter from its attorney, has purported to prohibit the WMA, whose members are also WOPOA members, to cease use of the Common Area property to anchor the marinas, to run electrical lines to the electrical box, and as a means of access by the WMA members, unless the WMA enters into a lease with WOPOA and agrees to several other terms.
- i. In late May 2016, WOPOA, through its directors and/or officers, unplugged the marinas' electrical cables from the electrical box and placed a lock on the electrical box, preventing the marina from receiving electricity.

3. Based on Plaintiffs' verified Application, the Court finds that there is a bona fide dispute as to the existence of the implied easement claimed by Plaintiff Windermere Marina Association, Inc. ("WMA") and as to the application of the express easement claimed by Plaintiffs Sandy Nielson, Dirk Hoekstra, Lisa Hutson, Kenneth R. Wynne and W. T. Womble (the "Individual Plaintiffs"), and that injunctive relief is necessary to preserve the continued existence of the right pending the outcome of trial on the merits.

4. Based on the verified Application, the Court also finds that it is probable that WMA and the Individual Plaintiffs have some easement to use the property in question and, therefore, are entitled to restoration of the status quo pending trial on the merits.

5. Additionally, the Court finds that absent a temporary restraining order, harm is imminent and irreparable because Plaintiffs will continue to be deprived of the use of their claimed easements.

6. After balancing the equities in play (the parties' and the public's interest), the Court finds that the requested temporary restraining order does not create any undue obligations for

WOPOA, but the absence of the order may cause Plaintiffs to suffer greater harm than it has already suffered.

7. It is therefore ORDERED THAT Plaintiffs post the appropriate bond and that WOPOA, and its directors, officers, representative, and anyone else acting in concert with it:

- a. remove the lock on the electrical box and restore power to the marinas;
at the cost of the Marina Association.
- b. refrain from interfering with WMA's access to and use of the electrical box;
- c. refrain from interfering with WMA's placement of the gangplank to allow WMA members to access the marina;
- d. refrain from interfering or tampering with the marina's anchoring system;
and
- e. refrain from issuing any directive, resolution, order, or regulation purporting to prohibit any WMA members for using the Common Area to access the marinas.

8. It is further ORDERED THAT the clerk issue notice to WOPOA that the hearing on Plaintiffs' application for temporary injunction is set for June 22, 2016, at 1:30 a.m./p.m. The purpose of the hearing will be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.

9. It is further ORDERED THAT Plaintiffs shall file with the Clerk of the Court a bond, in conformity with the law, in the amount of \$500.00. Plaintiffs are authorized to file a cash bond.

This order expires on June , 2016. **at the conclusion of the Temporary Injunction Hearing.**

Signed: 6/9/2016 11:35 AM

SIGNED on June 9, 2016.



PRESIDING JUDGE