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3 **FOR PUBLICATION**

4
5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **SAIPAN ACHUGAO RESORT**
9 **MEMBERS' ASSOCIATION,**

10 Plaintiff,

11 v.

12 **WAN JIN YOON**

13 Defendant.

14 **WAN JIN YOON**

15 Counter-Plaintiff,

16 v.

17 **SAIPAN ACHUGAO RESORT MEMBERS'**
18 **ASSOCIATION,**

19 Counter-Defendant.

Civil Action No. 03-0187E

**ORDER DENYING THIRD-PARTY
PLAINTIFF / COUNTER PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

20 **I. ORDER**

21 **THIS MATTER** came for a hearing on Defendant's *Motion for Temporary Restraining Order*
22 *and Preliminary Injunction* on July 2, 2003 at 1:30 p.m. in room 223A. Defendant, Wan Jin Yoon, was
23 represented by Joseph Aldan Arriola. Plaintiff, Saipan Achugao Resort Members' Association, was
24 represented by Gregory J. Koebel.

25 A. Standard for Injunctive Relief

26 "A decision to grant injunctive relief is based on equity and rests in the sound discretion of the
27 court," pursuant to the particular circumstances of the case. *United Pac. Corp. v. Dep't of Pub. Works*,
28 Civ. No. 97-1011 (N.M.I. Super. Ct. Oct. 27, 1997) (Order Den. Prelim. Inj. at 2). Due to the drastic

1 nature of injunctive relief, the party requesting a preliminary injunction must use clear and convincing
2 evidence to demonstrate their right to injunctive relief. *See Bean Dredging Corp. v. United States*, 22
3 Cl. Ct. 519, 522 (1991). To obtain a preliminary injunction, the moving party must show either (1) a
4 probability of success on the merits and the possibility of irreparable harm, or (2) the existence of serious
5 questions going to the merits and the balance of the hardships tips sharply in plaintiff's favor. *See Pac.*
6 *Am. Title Ins. & Escrow (CNMI), Inc. v. Anderson*, App. No. 98-019 (N.M.I. Sup. Ct. July 23, 1999)
7 (Opinion at 2-3). These are not two separate tests, but rather interrelated points on a sliding scale, where
8 the necessary degree of irreparable harm increases as the probability of success decreases. *Id.* at 4; *see*
9 *also Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985). With
10 respect to either part of the test, the moving party must demonstrate a significant threat of irreparable injury.
11 *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987).

12 1. *Likelihood of Success on the Merits and Possibility of Irreparable Harm*

13 In evaluating the likelihood of success on the merits, the evidence establishing success need not be
14 conclusive. *Terrell v. Terrell*, 719 N.Y.S.2d 41, 43 (N.Y. App. Div. 2001). In fact, a *prima facie*
15 showing of a right to relief is sufficient, as the actual proof of the case should be left to further proceedings.
16 *Id.* To show irreparable harm, the moving party must demonstrate that the injury is actual and imminent,
17 rather than a remote or speculative possibility, and that the alleged injury is incapable of being fully
18 remedied by monetary damages. *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 975 (2d
19 Cir.1989); *see also Loveridge v. Pendleton Woolen Mills, Inc.*, 788 F.2d 914, 917-18 (2d Cir. 1986).

20 2. *Existence of Serious Questions and Balance of the Hardships*

21 "Serious questions are 'substantial, difficult and doubtful, as to make them a fair ground for litigation
22 and thus for more deliberative investigation.'" *Republic of the Philippines v. Marcos*, 862 F.2d 1355,
23 1362 (9th Cir. 1988) (*citing Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir.
24 1953)). These questions must involve a "fair chance of success on the merits." *Nat'l Wildlife Fed'n v.*
25 *Coston*, 773 F.2d 1513, 1517 (9th Cir. 1985). When applying the balance of hardships prong, the moving
26 party must demonstrate that it would suffer significantly greater hardship if the injunction does not issue than
27 the defendant would suffer if the injunction were to issue. *See Anderson*, App. No. 98-019 (N.M.I. Sup.
28 Ct. July 23, 1999) (Opinion at 2-3).

1 B. Movant's Request for a Preliminary Injunction

2 Movant asserts that he will suffer further damage if the status quo is maintained regarding the forced
3 sale of his property and the managerial occupation of the Commercial Areas. "The threshold requirement
4 for the granting of preliminary injunctive relief is proof of inadequate remedy at law and irreparable harm
5 to the party seeking relief if the injunction is denied." *Ichiyasu v. Christie, Manson & Woods Int'l, Inc.*,
6 630 F. Supp. 340, 342 (N.D. Ill. 1986). To determine if the Movant has any adequate remedy at law, the
7 Court must determine whether the interim harm caused by the activity to be enjoined can be completely
8 offset by a subsequent award of damages or other legal relief. *Id.* Irreparable harm constitutes harm that
9 cannot be fully rectified by final judgment after trial. *Id.* "Where there is a complete and adequate remedy
10 at law through the recovery of calculable money damages, injury is generally not irreparable and equity will
11 not apply the extraordinary remedy of injunction." *United Pac. Corp. v. Dep't of Pub. Works*, Civ. No.
12 97-1011 (N.M.I. Super. Ct. Oct. 22, 1997) (Order Den. Prelim. Inj. at 4 (*citing Reuters Ltd. v. United*
13 *Press Int'l, Inc.*, 903 F.2d 904, 907 (2d Cir. 1990))).

14 The main thrust of an analysis of whether to grant a temporary restraining order or a preliminary
15 injunctions is irreparable harm. The movant must experience irreparable harm, detailed with specificity, in
16 order to warrant the severe judicial remedy of a preliminary injunction. Yoon, the Movant here, fails to
17 demonstrate exactly what amounts to irreparable harm in this instance. As far as this Court can ascertain,
18 the harm has already occurred, under the guise of the forced sale of the property in question. Furthermore,
19 this case appears to be in litigation mode and the Movant's concerns may be more properly addressed
20 through alternative procedural mechanisms. A dispute over the common Commercial Areas in question
21 may in fact be an ongoing matter of concern for both parties, and especially the Movant. Yet, the amount
22 of damage is something that is likely quantifiable and better reserved for resolution throughout the
23 continuation of the case.

24 A secondary concern of preliminary injunction analysis is that money damages are simply
25 inadequate to compensate the movant. Both the Movant and the Counter-Defendant have placed values
26 on the Commercial Areas associated with the Plumeria Resort currently under dispute. While there may
27 be some dispute regarding the value of said Commercial Areas, there has nevertheless been established
28 a range of value. That value is properly determined through adjudication of the lawsuit. The Movant

1 himself has apparently established, through expert appraisal, that the value of the Commercial Areas alone
2 is \$41,000. The value, while disputed, is in fact ascertainable. Additionally, the Movant purchased the
3 property for approximately \$401,000. The Movant stated he has made certain repairs to the property as
4 well. These expenditures are also the type that can be computed and ascertained with reasonable
5 accuracy.

6 **II. CONCLUSION**

7 Because the Movant has failed to describe precisely how the harm present in this case is irreparable
8 and how the damages involved are not ascertainable, the Court must **DENY** the *Motion for Temporary*
9 *Restraining Order and Preliminary Injunction*.

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11 SO ORDERED this 7th day of July 2003.

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13 /s/
14 David A. Wiseman
15 Associate Judge
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