

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO		DATE FILED: April 30, 2024 2:50 PM CASE NUMBER: 2023CV32439
Court Address: 7325 S POTOMAC ST, CENTENNIAL, CO, 80112		
Plaintiff(s) HEATHER GARDENS METROPOLITAN DISTRICT v. Defendant(s) HEATHER GARDENS ASSOCIATION		<p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2023CV32439 Division: 15                      Courtroom:
<b>Amended Order Denying Motion for Temporary Restraining Order</b>		

The motion/proposed order attached hereto: DENIED.

In its Motion, Defendant/Counterclaimant ("Association") has alleged that Plaintiff ("District") has voted to require the Association to vacate the office space it currently utilizes to conduct Association business and to store records. The Association seeks both a temporary restraining order and a preliminary injunction.

"The purpose of a temporary restraining order ("TRO") is to prevent "immediate and irreparable harm" to one of the parties in a lawsuit." *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). "Due to the powerful nature of TROs, they are short in duration [...] and may only be issued upon a strong showing that specific immediate and irreparable harm will occur absent the order." *Id.*

The Association has not satisfied its burden to establish a specific immediate and irreparable harm that will occur absent the entry of a temporary restraining order. Rather, it has only perfunctorily alleged that it will suffer the loss of records and employees if the District is permitted to remove Defendant from the office space it currently occupies. The Court finds that the Association has not alleged immediate and irreparable harm. Therefore, the motion for a temporary restraining order is denied.

The Court will address the motion for a preliminary injunction after receiving the District's response and any reply from the Association.

Issue Date: 4/30/2024



BEN L LEUTWYLER III  
District Court Judge

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO Arapahoe County Justice Center 7325 South Potomac Street Centennial, Colorado 80112	
Plaintiff: HEATHER GARDENS METROPOLITAN DISTRICT  v.  Defendant: THE HEATHER GARDENS ASSOCIATION, a Colorado nonprofit corporation	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> Case No.: 2023CV32439  Division: 15
Attorneys for the Heather Gardens Association: Travis B. Keenan, #41354 Carey Smith, #48773 Winzenburg, Leff, Purvis & Payne, LLP 8020 Shaffer Parkway, Suite 300 Littleton, Colorado 80127 Telephone: (303) 863-1870 E-mail: <a href="mailto:tkeenan@wlpplaw.com">tkeenan@wlpplaw.com</a> ; <a href="mailto:csmith@wlpplaw.com">csmith@wlpplaw.com</a>	
<b>VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION          FOR PRELIMINARY INJUNCTION</b>	

Defendant and Counterclaimant the Heather Gardens Association (“Association”), by and through counsel, Winzenburg, Leff, Purvis & Payne, L.L.P., moves for a temporary restraining order and for a preliminary injunction as follows:

### CONFERRAL

Undersigned counsel has conferred pursuant to C.R.C.P. 121 1-15(8) with counsel for the Heather Gardens Metropolitan District (“District”) and attempted to negotiate a mutually agreed-upon status quo agreement, but have been unsuccessful thus far. The District opposes the relief sought in this Motion.

### FACTS

1. The Association and the District are parties to a Management Agreement dated August 23, 2018.
2. Article IV, Section 8, of the Parties’ Management Agreement provides, in relevant part:

In consideration of the Association's undertakings in this Agreement for the convenience of the District, during the term of this Agreement the Association is granted the right to occupy office space currently occupied by the Association in the Clubhouse located at 2888 So. Heather Gardens Way[.] (emphasis added).

3. Similarly, Article IV, Section 6, of the Management Agreement states, in relevant part: "the Association shall have the right to occupy and utilize the Properties for the use and benefit of those legally entitled thereto[.]"

4. On April 18, 2024, the District's Board adopted its Motion Number 2024-4-18-3 ("Motion"), which is attached as Exhibit A.

5. As set forth in the Motion, the District has directed the Association to vacate certain office space located in the clubhouse as of May 1, 2024, so the District can locate two employees in that office space.

6. The office space referenced in the Motion is currently occupied by one of the Association's employees, who generally works 40 hours a week in that office, and used to store confidential records.

7. The District's Motion and planned removal of the Association is a direct violation of the Association's right to occupy office space pursuant to the Management Agreement.

### **ARGUMENT** ***Temporary Restraining Order***

8. Under C.R.C.P. 65(b), a temporary restraining order is appropriate when it clearly appears from the facts set forth in the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition.

9. The District adopted the Motion on April 18, 2024.

10. The District plans to force the Association to vacate the office space on May 1, 2024.

11. The Association will not have sufficient time to obtain a restraining order if the District proceeds according to the plan set forth in its Motion. Therefore, the District should be proscribed from occupying the office space or compelling the Association to vacate the office space until it is determined what rights, if any, the parties have to occupy the office space.

12. The potential harm to the Association if a temporary restraining order is not issued includes the loss of confidential records and the loss of employees.

13. A temporary restraining order should issue in this matter to protect both the Association and District. The District will not suffer cognizable damages if it is not permitted to occupy the office space on May 1, 2024; indeed, a restraining order will protect all parties from unnecessary economic injury.

### ***Preliminary Injunction***

14. A preliminary injunction is appropriate where the applicant shows a reasonable probability of success on the merits; the applicant's property is in danger real, immediate, and irreparable injury; a preliminary injunction can prevent the injury; there is no plain, speedy, or adequate remedy at law; the preliminary injunction will not disserve the public interest; equity favors injunction; and the injunction will preserve the status quo until a trial on the merits. Rathke v. McFarlane, 648 P.2d 648, 653-654 (Colo. 1982).

15. The Association has a reasonable probability of success on the merits. The Management Agreement is plain on its face: the Association has the right to continue occupying the office space at 2888 So. Heather Gardens Way. The District has no right to compel the Association to vacate that office space or to take up occupancy of that office space.

16. The Association's real property is in danger of real, immediate, and irreparable injury from the District's actions. The District's Motion lays out the District's plans clearly, for all to see. In addition, the Association's membership is in danger of real, immediate, and irreparable injury if the confidential records stored in the office space are not protected.

17. There is no plain, speedy, or adequate relief at law for the injury the Association will suffer if the District is permitted to unilaterally evict the Association from the office space.

18. The granting of a preliminary injunction will not disserve the public interest because a preliminary injunction will allow the parties to resolve this matter without incurring unnecessary costs and expenses and the public's interest is best served by maintaining the status quo.

19. The balance of the equities favors an injunction because the Association has the right to occupy the office space, has occupied the office space, and has acted in good faith to resolve the disputes that lead up to the District's decision to adopt its Motion.

20. An injunction will preserve the status quo pending a trial on the merits.

WHEREFORE, the Association respectfully requests that the Court enter the following relief:

a) Order that the Heather Gardens Metropolitan District shall not enter upon the office space at 2888 So. Heather Gardens Way, shall not change the locks to any such office space, and shall not compel the Association to vacate such office space pending further determination of the Parties' rights to such office space;

b) Order that any contractor, agent, successor, assign, employee, director, member, manager, or other agent of the District shall not take any action prohibited to the District;

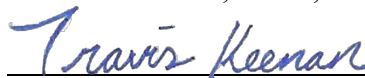
c) Order that no bond is required to be posted by the Association as any damages that may be suffered by the District if this restraint is wrongful may be adequately addressed at a trial on the merits of any of the District's claims or counterclaims;

d) Order that the Association's Motion for Preliminary Injunction shall be set for hearing at the earliest possible time, and that the Temporary Restraining Order shall expire after fourteen days, but be extended until the date of the hearing on the Motion for Preliminary Injunction if necessary; and

e) For such other relief as to the Court may deem proper.

Respectfully submitted this 29<sup>th</sup> day of April, 2024.

WINZENBURG, LEFF, PURVIS & PAYNE, LLP



Travis B. Keenan, #41354

Carey Smith, #48773

Defendant's Address:  
2888 So. Heather Gardens Way  
Aurora, CO 80014

## CERTIFICATE OF SERVICE

I hereby certify that on this 29<sup>th</sup> day of August, 2024, a true and correct copy of the foregoing Verified Motion for Temporary Restraining Order and Motion for Preliminary Injunction was filed with the Court and served via Colorado E-Filing to the following:

Peter C. Forbes, #14081  
Kamper & Forbes, LLC  
730 Seventeenth Street, Suite 700  
Denver, CO 80202



Travis Keenan

Attachment to Order - 2023CV332439

**AFFIDAVIT**

STATE OF COLORADO )  
 )ss  
COUNTY OF Arapahoe )

I, Lary Herkal, first being duly sworn upon oath state that I am the General Manager of the Heather Gardens Association, and state that the statements contained in the above AMENDED VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION regarding the activities between the various parties are accurate and correct to my best belief and information.

Further Affiant sayeth naught.

*Lary Herkal*

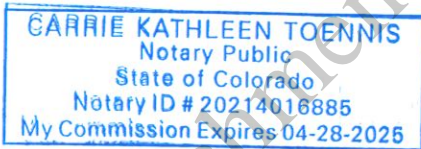
Subscribed and sworn before me this 29<sup>th</sup> day of August, 2024, by Lary Herkal.

My commission expires:

(SEAL)

*Carrie Kathleen Toennis*

Notary Public



Attachment to Order 2025-132439