

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 19, 2017

EVENT DATE: 10/20/2017

EVENT TIME: 01:30:00 PM

DEPT.: C-69

JUDICIAL OFFICER: Katherine Bacal

CASE NO.: 37-2014-00044014-CU-OR-CTL

CASE TITLE: SAN DIEGO METROPOLITAN TRANSIT SYSTEM VS. GRAND CENTRAL WEST LLC
[IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other Real Property

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 09/27/2017

The motion to dissolve preliminary injunction, filed by defendant Grand Central West, LLC ("Grand Central") is granted.

Preliminary Matters

The Court declines to rule on MTS's objections to the previously filed declarations of Juan Noe, John Lopez, Dawn Zimmer, and Gordon Carrier and the San Ysidro Intermodal Transportation Center Environmental Assessment (Objections 1-9 and 11) because Grand Central is not relying on them. See, Resp. to Objs. MTS Policy No. 39 and the building permits (Objections 23, 25-26) are irrelevant and were not considered.

MTS's supplemental objections to Calvo's declaration (Objections 1-6) and Exhibits 13-15 (Objections 14-16) are sustained.

Grand Central's objections to the declaration of Baltazar Cruz, ¶¶ 7-8, 18, and 26 are sustained.

All other objections are overruled.

MTS's request for judicial notice is granted as to Exhibits 1-5 and denied as to Exhibits 6-12. Grand Central's unopposed request for judicial notice is granted.

Background and Discussion

The facts and circumstances giving rise to this action have been set out in prior rulings. On February 9, 2016, the Court granted a preliminary injunction enjoining Grand Central from using the rear wall opening of its building except as an emergency exit. ROA # 98.

Grand Central moves to dissolve the injunction. A court may dissolve an injunction upon a showing that there has been a material change in law or facts upon which the injunction was granted or that "the ends of justice would be served" by a modification or dissolution of the injunction. Code Civ. Proc., § 533. That is the case here. When the Court granted the request for an injunction, Grand Central's legal theory was that its actions did not constitute a trespass because MTS had expressly or impliedly dedicated a sidewalk for public purposes. In June 2017, the Supreme Court decided *Sher v. Burke*

(2017) 3 Cal.5th 136, which arguably precludes Grand Central's express and implied dedication claims. As a result, Grand Central sought and obtained leave to amend to incorporate a theory of abutter's rights of ingress and egress in its cross-complaint and answer. ROA # 659. Thus, there has been a change in the law upon which the injunction was granted. Furthermore, it is appropriate to re-examine the injunction in the interests of justice. In deciding whether to grant an injunction the Court must consider the likelihood of success on the merits. Had the *Sher* case been the law when MTS sought an injunction, the Court would not have concluded MTS was likely to prevail.

Grand Central's abutter's rights theory is based on *Short Line Associates v. City and County of San Francisco* (1978) 78 Cal.App.3d 50. The issue in *Short Line* was whether a 20-foot strip of land abutting plaintiffs' office building and forming part of a pedestrian oriented area (Hallidie Plaza) is a street. *Id.* at 56. The court concluded that the strip of land was designed and constructed as a public street or way for the exclusive use of pedestrians and therefore plaintiffs acquired an abutting owner's right of access by operation of law. *Id.* at 57, 59.

Here, MTS acquired its property in July 2003 through eminent domain for the purpose of constructing and operating the San Ysidro Intermodal Transportation Center ("SYITC"). Grand Central's Exs. 1-3. MTS argues the area in question is not a "distinct exclusively pedestrian walkway." Previously, it was unclear whether the walkway extended across the entire MTS property. ROA #98. However, photographs now clearly show a well-defined walkway between the properties that allows pedestrians to travel north/south from one edge of the property to the other. Grand Central Exs. 32, 156-160. The walkway appears to be as much a "public street" as Hallidie Plaza. If Grand Central is able to prove up its claim as an abutting owner, then pursuant to *Short Line* it

would have a right to access the walkway by operation of law, thereby negating MTS's trespass claim. This is regardless of whether MTS dedicated the sidewalk to public use. In light of this, the Court cannot find that MTS is likely to prevail on the merits. Accordingly, the motion to dissolve the injunction is granted.

The minute order will be the order of the Court. Grand Central is directed to serve notice on all parties within 2 court days of this ruling.