

WILLIAM B. CHANDLER III
CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: May 24, 2006
Decided: May 26, 2006

Dennis A. Mason II
The Eveland Law Firm
715 North King Street, Suite 200
Wilmington, DE 19801

Noel E. Primos
Schmittinger & Rodriguez, P.A.
P.O. Box 497
Dover, DE 19903

Re: *Cochran, et al. v. Kent Co. Dept. of Planning Servs., et al.*
Civil Action No. 2179-K

Dear Counsel:

Plaintiffs filed this emergency request for a temporary restraining order at approximately 4:30 p.m. Wednesday evening. I heard counsel via telephone from about 5:00 p.m. until 5:45 p.m. Because of the late filing and the exigency of the matter, no court reporter was available. Hence, this letter memorializes my ruling.

This is an action for injunctive relief challenging the Kent County Department of Planning Services (“KCDPS”) in its efforts to demolish a 160 year-old barn owned by plaintiffs. Defendant KCDPS is an agency of Kent County and is charged with the administration and enforcement of land use

rules, building codes and other related issues in Kent County. On February 10, 2006, plaintiffs were informed in writing that an inspection of their barn revealed that it was in extremely poor condition and had been declared unsafe. As a result, plaintiffs were given ninety days to comply (which is a statutorily-defined time period) with the corrective/condemnation notice and order, or else the structure would be demolished by a contractor hired by defendants, with the cost thereof assessed to plaintiffs.

Plaintiffs appealed KCDPS' decision to the Kent County Board of Appeals ("KCBA"). On March 13, 2006, after hearing evidence and testimony presented by plaintiffs, the KCBA issued a written decision modifying the original decision so that

the appellants are allowed until March 31, 2006, to submit to [KCDPS] a report of a design professional ... supporting either demolition or salvage of the structure in question, and the appellants are further allowed until May 3, 2006, to submit to [KCDPS] a schedule acceptable to [KCDPS] for either demolition or salvage of the structure in question, and if either or both of said deadlines are not met, [KCDPS] may proceed with demolition of the structure in question on May 11, 2006.

Plaintiffs hired an engineer who submitted plans and a schedule to KCDPS. A representative of KCDPS phoned plaintiffs and stated that the proposed plans and schedule were insufficient. On May 18, 2006, KCDPS sent plaintiffs a written response citing their failure to comply with the deadlines imposed by the March 13, 2006 KCCBA decision. On May 23,

2006, plaintiffs were informed that demolition of the barn was to begin on Thursday, May 24, 2006. This action for a temporary restraining order was filed at 4:30 p.m. on Wednesday, May 23, 2006.

One seeking injunctive relief must establish: (i) a reasonable likelihood of success on the merits; (ii) a threat of irreparable harm; and (iii) that the balance of the equities weighs in their favor. Plaintiffs arguably satisfy the first element in that they have a colorable claim, although I admit to having some doubts about their likelihood of success on the merits. For the following three reasons, however, I conclude that plaintiffs fail to establish either the second or third elements of the standard for emergency injunctive relief.

First, plaintiffs delayed unreasonably in filing for emergency relief. Plaintiffs knew in late April that KCDPS had rejected their proposed renovation plans and their proposed schedule for those plans (plaintiffs' contractor proposed to begin the renovations to the barn starting on June 28, which was more than a month after the deadline imposed by the County). The delay, from late April to May 24, unfairly burdened the Court and defendants, who had contracted with a demolition company to demolish the barn on May 25. Furthermore, defendants' attorney was not even served with the complaint until this Court began the TRO hearing.

Second, turning to the question of irreparable harm, injury to real property is typically considered irreparable, subject to a few exceptions. One of these exceptions applies where equitable circumstances or the public interest outweighs the principle that property is unique and injury to it is irreparable. This is just such a case. The property here is a barn that is admittedly very old, architecturally unusual and, as plaintiffs concede, is in seriously dilapidated condition. In fact, plaintiffs' counsel stated to the Court that it would cost over \$56,000 to repair the barn. Moreover, there is no evidence in the record that suggests the structure has some historical significance to Delaware (plaintiffs' counsel admitted his clients tried to interest the Historical Society in the barn, but the Society has taken no interest in the structure and has declined to become involved in this litigation). Although the age of the barn suggests it might be of some historical interest, this alone is not enough to demonstrate "irreparable loss" if it is demolished.

Finally, the balance of the equities supports a denial of plaintiffs' temporary restraining order. The barn poses an undisputed risk to public safety. A neighboring residence is threatened by the barn, since the barn actually tilts towards it, thus posing a serious risk of physical injury or property damage if the barn were to collapse. The serious risk to public safety tips the balance of the equities against plaintiffs and in favor of

defendants. Plaintiffs' unreasonable delay also tips the equities in defendants' favor.

Plaintiffs were given a prescribed time period to develop a plan for renovation and a schedule for completion. They were told that these plans would have to be approved by KCDPS. Plaintiffs failed to secure approval of their plans and were told in late April that their plans were inadequate and their schedule unsatisfactory. Plaintiffs waited an additional month to come to this Court seeking relief. As a result of their unreasonable delay and for the additional reasons stated above, I denied plaintiffs' motion for a temporary restraining order.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name.

William B. Chandler III

WBCIII:wbg