

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 12-11117-MLW

FRIEDRICH LU,
Plaintiff,

v.

GEORGE HULME, in his individual
capacity and in his official capacity,
TRUSTEES OF THE BOSTON PUBLIC
LIBRARY,
Defendants.

**DEFENDANTS GEORGE HULME AND THE TRUSTEES OF THE
BOSTON PUBLIC LIBRARY'S OPPOSITION TO PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

Defendants George Hulme ("Hulme") and the Trustees of the Boston Public Library ("Trustees") hereby submit this Opposition to Plaintiff's Motion for Temporary Restraining Order ("TRO"). Plaintiff's TRO and accompanying Complaint fail to demonstrate a likelihood of success on the merit, fail to demonstrate any kind of irreparable harm, and are contrary to the general public's interest.

As set forth in greater detail in Defendants' concurrently filed Motion to Dismiss, Plaintiff's complaint does not set forth any facts that establish the basic elements of any constitutional claims.¹ Assuming, *arguendo*, that this court finds a reason to deny the Defendants' Motion to Dismiss, Plaintiff's TRO should be denied. Plaintiff's TRO requests that this Court provide him with the right "to enter [the Boston Public Library] unencumbered." *See* TRO, ¶ 5. If granted, such a request would provide Plaintiff with an

¹ For purposes of this Opposition, Defendants refer to the facts as described in Defendants' Memorandum in Support of Motion to Dismiss and relies on the arguments set forth therein.

advantage over all other patrons who are subject to the Boston Public Library's Appropriate Library Use Policy (the "Policy").²

To succeed on his TRO the Plaintiff must demonstrate: (1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a balancing of the equities, and (4) whether granting such relief is in the public interest. *Bear Republic Brewing v. Central City Brewing*, 716 F.Supp. 2d 134, 139 (D.Mass. 2010) citing *Weaver v. Henderson* 984 F.2d 11, 12 & n.3 (1st Cir. 1993). Injunctive relief is a "drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Id.* citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quoting 11A C. Wright, A. Miller & M. Kane, Fed. Prac. & Proc. § 2948, pp. 129-130 (2d ed. 1995) (emphasis added; footnotes omitted)).

As to the first element, Plaintiff must demonstrate a substantial likelihood of success on the merits. Plaintiff, however, has failed to plead factual allegations that even suggest a violation of any of his constitutional rights. Count I is highly unlikely to succeed because the libraries may maintain restrictions on use, which enable the general public to use and enjoy the facilities. Additionally, Count II is unlikely to succeed because Plaintiff has failed to describe any behavior by the Trustees or Mr. Hulme that would be construed as "threats, intimidation, or coercion" per M.G.L. c. 12 § 11I. Absent any facts that would provide a basis for viable claims, Plaintiff has not demonstrated a likelihood of success on the merits.

Regarding the second element, Plaintiff cannot demonstrate a significant risk of irreparable harm. Plaintiff was not banned from the BPL, but only prohibited from

² In paragraph 11 of his complaint, Plaintiff alleges his belief that the Boston Public Library ("BPL") does not have any kind of library usage policy. The BPL's Appropriate Library Usage Policy is posted on its web site, which is publicly available at <http://www.bpl.org/general/policies/acceptableuse.htm>.

entering with his belongings in an open grocery cart. Plaintiff may enter as any other patron may, so long as his use of the BPL's facilities is consistent with the BPL's Policy. Compliance with reasonable regulations does not constitute irreparable harm. Indeed, as discussed above, Courts reviewing such policies have found that reasonable restrictions are consistent with a library's obligation to provide access to information to all patrons. *See Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 592 (6th Cir. 2003); *Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242, 1262-63 (3rd Cir. 1992).

Moreover, Plaintiff has failed to demonstrate that his alleged need to enter the public library with his personal belongings outweighs the library's obligation to ensure that all patrons enjoy the facility without undue disturbance. Granting Plaintiff's temporary restraining order would have the practical effect of taking away the BPL's ability to enforce its Policy and give Plaintiff an advantage over all other patrons because he would be allowed to enter "unencumbered." Unlike other patrons, who are not permitted to bring in excessive amounts of baggage or other personal items, Plaintiff's relief would merely frustrate the BPL's ability to safeguard the cleanliness and security of its facilities.

Finally, granting this TRO is not in the public's interest, but merely provides Plaintiff with advantages over others. The general public has an overriding interest in enjoying the BPL without interference or disturbance from other patrons. Thus, in order to safeguard the general public's interest in accessing information and using the library's services, Plaintiff's TRO should be denied.

CONCLUSION

For the reasons stated above, Defendants, the Trustees of the Boston Public Library and George Hulme, respectfully request that this Court deny Plaintiff's Motion for Temporary Restraining Order.

Date: July 5, 2012

Respectfully submitted,

DEFENDANTS GEORGE HULME, in his individual capacity and in his official capacity and TRUSTEES OF THE BOSTON PUBLIC LIBRARY

William Sinnott
Corporation Counsel

By their attorneys:

/s/Caroline O. Driscoll
Caroline O. Driscoll, BBO# 647916
Assistant Corporation Counsel
City of Boston Law Department
City Hall, Room 615
Boston, MA 02201
(617) 635-4925

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that on July 3, 2012 I emailed Plaintiff regarding the Defendants' intention to file this Motion and attempted to resolve or narrow the issues raised in this case. As of the time of filing, I have not received a response from Plaintiff.

I also certify that on July 5, 2012, I filed this document through the Court's CM/ECF system and that an electronic copy will be sent via email to those identified as non-registered participants per agreement with Plaintiff.

/s/Caroline O. Driscoll
Caroline O. Driscoll