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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN STROSS,

Plaintiff,

v.

THE GABLES CONDOMINIUM
ASSOCIATION,

Defendant.

CASE NO. C09-830JLR

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
TEMPORARY RESTRAINING
ORDER

I. INTRODUCTION

This matter comes before the court on Plaintiff Susan Stross’s motion for temporary restraining order (Dkt. # 2). The court has reviewed the complaint, the motion and accompanying papers, and the remainder of the record, and has heard the argument of counsel at the June 18, 2009 hearing on the motion for temporary restraining order. As outlined below in the court’s findings of fact and conclusions of law, the court GRANTS Ms. Stross’s motion for a temporary restraining order on the terms described in Part IV and orders that the parties appear on Wednesday, July 1, 2009, at 9:30 a.m. for a hearing on Ms. Stross’s motion for preliminary injunction.

II. FINDINGS OF FACT

1. Ms. Stross is resident of Defendant The Gables Condominium Association (“The Gables”) in Seattle, Washington. She owns a condominium unit in The Gables. (Compl. (Dkt. # 1) ¶ 1; Declaration of Susan Stross (“S. Stross Decl.”) (Dkt. # 2-3) ¶¶ 2-3.)
2. Ms. Stross has progressive multiple sclerosis. (Compl. ¶ 5; S. Stross Decl. ¶ 1.) She is mentally competent; however, she has no use of her legs or right arm and she has only limited and sporadic use of her left arm. (Compl. ¶ 5; Declaration of Peter Stross (“P. Stross Decl.”) (Dkt. # 2-3) ¶ 3; S. Stross Decl. ¶¶ 7-8.) Ms. Stross uses an electric wheelchair. (S. Stross Decl. ¶ 1.)
3. Ms. Stross requires physical assistance on a daily basis. (Compl. ¶¶ 6, 11.) She employs six aides to assist her with daily functions, including getting out of bed, bathing, dressing, and eating. (Compl. ¶ 8; S. Stross. Decl. ¶ 9.) Ms. Stross’s aides work on a part-time schedule on varying days. (S. Stross. Decl. ¶ 9.)
4. Ms. Stross also has four emergency responders who are available to provide emergency assistance during the night. (Compl. ¶ 11.) Her emergency responders include her sister, mother, father, and brother-in-law. (*Id.*)
5. The Gables is a 12-unit condominium building governed by a board of directors (“Board”). (Compl. ¶ 7.) Ms. Stross has owned a condominium unit at The Gables for 20 years. (Compl. ¶ 8.)
6. For 16 years, Ms. Stross has had a sufficient number of keys to the exterior door to The Gables and to her condominium unit door so as to provide keys to each of her aides, her emergency responders, and herself. (Compl. ¶ 9.)

- 1 7. On April 7, 2009, the Board decided to change the locks on the front door of The
2 Gables. (Compl. ¶ 13.) The Board informed owners that they would be given
3 only four keys each. (*Id.*)
- 4 8. On April 27, 2009, Ms. Stross requested that she be provided 12 keys as a
5 reasonable accommodation under the Federal Fair Housing Act. (*Id.*)
- 6 9. On May 20, 2009, Ms. Stross attended a meeting with the Board. (Compl. ¶ 20.)
7 At the meeting, she agreed “to install a key box on the front gate of The Gables so
8 that her helpers would use one communal key between them to access the
9 building.” (Compl. ¶ 21.) Ms. Stross also agreed to provide a list of her aides and
10 to provide her aides with additional instructions regarding loitering, not banging
11 the dumpster lid, etc. (Compl. ¶ 22.) Ms. Stross made these agreements as a
12 gesture of good will.
- 13 10. On May 30, 2009, the Board provided Ms. Stross’s father, Peter Stross, with
14 proposed documents to sign regarding Ms. Stross’s aides. (Compl. ¶ 24; P. Stross
15 Decl. ¶ 16 & Exs. B and C.) The first document is titled “Agreement between the
16 Gables Homeowner Association and Stross family regarding caregivers for Susan
17 Stross” (“Agreement”) and the second is titled “Instructions for Caregivers for unit
18 #202 in The Gables Condominiums” (“Instructions”). The Agreement required the
19 signatures of Ms. Stross, Peter Stross, Fay Stross (mother), and Cynthia Stross
20 (sister). (P. Stross Decl., Ex. C.) Mr. Stross refused to sign the documents.
21 (Compl. ¶ 26.)
- 22 11. On June 10, 2009, the Board notified Ms. Stross that the locks would be changed
23 on June 19, 2009. (Compl. ¶ 27.) The Board further stated that Ms. Stross would
24 not be allowed to install the key box or have 12 keys unless her family signed the
25 Agreement and the Instructions. (*Id.*) Ms. Stross subsequently filed the instant
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1 action and motion for temporary restraining order. She seeks an injunction “to
2 prevent the re-keying absent the provision of an adequate number of keys to ensure
3 access for Ms. Stross’[s] helpers and emergency responders.” (Compl. ¶ 28.)

4 III. CONCLUSIONS OF LAW

5 12. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28
6 U.S.C. § 1343. Ms. Stross brings suit pursuant to Title VIII of the Civil Rights Act
7 of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §
8 3601 *et seq.* (“Fair Housing Act”).

9 13. In order to obtain a temporary restraining order, a plaintiff must meet the standards
10 for issuing a preliminary injunction. *Stuhlberg Int’l Sales Co. v. John D. Brush &*
11 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
12 temporary restraining order standards are “substantially identical”).

13 14. In order to obtain a preliminary injunction, Plaintiffs must meet either the Ninth
14 Circuit’s “traditional” or “alternative” test. The traditional test requires the court
15 to find that:

16 (1) the moving party will suffer irreparable injury if the relief is denied;
17 (2) the moving party will probably prevail on the merits; (3) the balance
18 of potential harm favors the moving party; and (4) the public interest
19 favors granting relief.

20 *Cassim v. Bowen*, 824 F.2d 791, 795 (9th Cir. 1987); *see also Winter v. Natural*
21 *Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 375-76 (2008).

22 15. The alternative test requires the court to find: “(1) a combination of probable
23 success and the [likelihood] of irreparable injury or (2) that serious questions are
24 raised and the balance of hardships tips sharply in its favor.” *Lands Council v.*
25 *McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (citations omitted) (modified from
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1 “possibility” to “likelihood” in light of the Supreme Court’s decision in *Winter*, 129
2 S. Ct. at 375-76¹); *see Cassim*, 824 F.2d at 795 (citations omitted).

3 16. The two prongs of the alternative test are not separate inquiries, but rather
4 “extremes on a single continuum.” *Lands Council*, 537 F.3d at 987; *see Clear*
5 *Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003).

6 A strong showing of hardship means that a plaintiff need not show as strong a
7 likelihood of success, and vice versa. *See Clear Channel*, 340 F.3d at 813.

8 17. The court’s ultimate decision on a motion for preliminary injunction is within its
9 discretion. *Cassim*, 824 F.2d at 796.

10 18. Under Fed. R. Civ. P. 65(b), an ex parte temporary restraining order can issue only
11 if:
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13 (1) it clearly appears from specific facts shown by affidavit or by the
14 verified complaint that immediate and irreparable injury, loss, or
15 damage will result to the applicant before the adverse party or that
party’s attorney can be heard in opposition, and

16 (2) the applicant’s attorney certifies to the court in writing the efforts,
17 if any, which have been made to give the notice and the reasons
18 supporting the claim that notice should not be required.

19 19. Ms. Stross caused copies of the complaint, the motion for temporary restraining
20 order and accompanying papers, and this court’s order setting hearing on the
21 motion to be delivered to counsel for The Gables on June 17, 2009, prior to the
22 June 18, 2009 hearing on the motion. (Affidavit of Service (Dkt. # 4) at 2.)

23 Additionally, Ms. Stross advised the Board and counsel for The Gables of her
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26 ¹ In *Winter*, the Supreme Court clarified that where a plaintiff has established probable
27 success on the merits, a mere “possibility” of irreparable injury is insufficient; rather, the plaintiff
28 must demonstrate that irreparable injury is “likely.” *Winter*, 129 S. Ct. at 375-76; *see Save*
Strawberry Canyon v. Dep’t of Energy, ___ F. Supp. 2d. ___, No. C 08-03494 WHA, 2009 WL
723836, at *2 (N.D. Cal. March 18, 2009).

1 intent to seek a temporary restraining order prior to filing the complaint and
2 motion. (Declaration of Cynthia Stross (“C. Stross Decl.”) (Dkt. # 2-5) ¶¶ 7-9.)

3 20. The court heard from counsel for Ms. Stross and counsel for The Gables at the
4 June 18, 2009 hearing.

5 21. Irreparable Harm: The court concludes that it is likely that Ms. Stross will suffer
6 immediate and irreparable harm if The Gables changes the locks without providing
7 Ms. Stross with either 12 keys or a key box for her aides and emergency
8 responders. Ms. Stross contends that (1) she is entirely dependant on the physical
9 assistance provided by her aides and emergency responders; (2) she will suffer
10 harm if deprived of the ability to live in her home, which is customized for her
11 use; and (3) she will suffer unquantifiable harm if unable to use and enjoy the
12 dwelling that allows her a measure of independence in life. (Mot. (Dkt. # 2) at 10-
13 11.) On the present record, Ms. Stross has established a strong likelihood that she
14 would not be able to continue living in her condominium unit without a viable
15 means for her aides and emergency responders to access her unit. Forcing Ms.
16 Stross from her condominium unit—her home for the last 20 years—is the type of
17 harm that cannot be remedied by an award of damages. Moreover, the court
18 emphasizes that this is the type of serious harm that strikes directly at Ms. Stross’s
19 core dignitary interests.

20 22. Success on the Merits: Ms. Stross has established a strong likelihood of success
21 on the merits of her reasonable accommodation claim under the Fair Housing Act.
22 To be entitled to a reasonable accommodation under 42 U.S.C. § 3604(f)(3)(B), a
23 plaintiff must show that: (1) plaintiff suffers from a handicap as defined in 42
24 U.S.C. § 3602(h); (2) defendant knew of plaintiff’s handicap or should reasonably
25 be expected to know of it; (3) accommodations of the handicap ‘may be necessary’
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1 to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4)
2 defendant refused to make such accommodation. *United States v. Cal. Mobile*
3 *Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997). The reasonable
4 accommodation inquiry is highly fact-specific and requires a case-by-case
5 determination. *Id.* at 1480; *see generally Thompson v. Westboro Condominium*
6 *Ass'n*, No. C05-1893JLR, 2006 WL 2473464, at * 2-5 (W.D. Wash. Aug. 25,
7 2006).
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9 23. On the face of her complaint, Ms. Stross has alleged a prima facie case under 42
10 U.S.C. § 3604(f)(3)(B). First, Ms. Stross suffers from a handicap within the scope
11 of 42 U.S.C. § 3602(h).² Second, The Gables knew or should have known of Ms.
12 Stross's handicap. Third, an accommodation of Ms. Stross's handicap appears
13 necessary to afford her an equal opportunity to use the dwelling. Due to her
14 physical limitations, Ms. Stross cannot open the building doors herself or operate
15 the system to remotely open the front door for her aides or emergency responders.
16 In turn, without her aides, Ms. Stross cannot live in her unit because she cannot
17 perform basic daily tasks without significant assistance. The proposed
18 accommodations appear reasonable. This impression is reinforced by Ms. Stross's
19 apparent willingness to pay for the key box, the fact that she has employed
20 multiple aides for many years while living at The Gables, and the fact that The
21 Gables has already indicated a general willingness to allow the key box, subject to
22 certain restrictions. Fourth, The Gables has refused to make an accommodation.
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26 ² 42 U.S.C. § 3602(h) defines the term "handicap" to mean, with respect to a person, "(1)
27 a physical or mental impairment which substantially limits one or more of such person's major life
28 activities, (2) a record of having such an impairment, or (3) being regarded as having such an
impairment." On the present record, it appears that Ms. Stross's major life activities are
substantially limited by a physical impairment, *i.e.*, multiple sclerosis. (S. Stross. Decl. ¶ 7.)

1 24. Balance of Hardships: The court finds that The Gables will suffer little or no harm
2 if enjoined from changing the locks and not providing Ms. Stross with 12 keys or a
3 key box. At the hearing, The Gables raised concerns regarding the safety of all
4 condominium owners. On the present record, however, there is little evidence to
5 suggest that Ms. Stross's aides or emergency responders have contributed to
6 security concerns. By contrast, as discussed above, Ms. Stross will likely suffer
7 immediate and irreparable harm if not provided with 12 keys or a key-box. The
8 balance of hardships therefore tips sharply in favor of Ms. Stross.

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10 25. The court concludes that Ms. Stross has met her burden under Federal Rule of
11 Civil Procedure 65 for issuance of a temporary restraining order. The court
12 therefore issues a temporary restraining order on the terms discussed below.

13 **IV. TEMPORARY RESTRAINING ORDER**

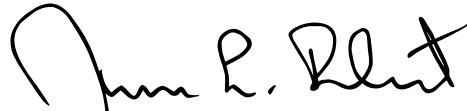
14 Defendant The Gables, its representatives and agents, including the Board, are
15 enjoined as follows:

- 16 1. The Gables shall not change the exterior locks of the condominium building before
17 noon on Thursday, June 25, 2009.
- 18 2. At Ms. Stross's discretion, if The Gables changes the locks of the building, The
19 Gables shall either (a) provide Ms. Stross with 12 keys to the building for use by
20 her aides and emergency responders; or (b) allow Ms. Stross to install a key box
21 for use by her aides and emergency responders.
- 22 3. The Gables shall provide new keys to Ms. Stross in a timely manner.
- 23 4. Ms. Stross need not sign any agreement as a pre-condition to the above-described
24 relief.
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1 Ms. Stross shall deposit \$1,000 cash in the court's registry as bond for this
2 temporary restraining order. This order shall not take effect until Ms. Stross files the
3 deposit.

4 The court sets a hearing on preliminary injunction for Wednesday, July 1, 2009, at
5 9:30 a.m. The court converts Ms. Stross's motion for temporary restraining order (Dkt. #
6 2) into a motion for preliminary injunction. This temporary restraining order shall
7 continue in effect until the court issues an order on Ms. Stross's motion for a preliminary
8 injunction. The Gables shall file a response to the motion for preliminary injunction by
9 Tuesday, June 23, 2009. Ms. Stross shall file a reply by noon on Tuesday, June 30, 2009.

10 Dated this 18th day of June, 2009, at 6:30 p.m.

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15 JAMES L. ROBART
16 United States District Judge
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