

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PUFF HOOKAH LOUNGE, INC.,

Plaintiff,

v

Case No. 14-138904-CK  
Hon. Wendy Potts

KARCH, LLC,

Defendant.

OPINION AND ORDER RE:

PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE MARCH 14, 2014, OPINION  
AND ORDER RE: PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

AND

PLAINTIFF'S EMERGENCY MOTION TO PRESERVE THE STATUS QUO

AND

PLAINTIFF'S EMERGENCY MOTION TO CLARIFY ORDER RE: PLAINTIFF'S  
EMERGENCY MOTION TO PRESERVE THE STATUS QUO

At a session of Court  
Held in Pontiac, Michigan

On

**MAY 20 2014**

The matter is before the Court on Plaintiff Puff Hookah Lounge Inc.'s motion for reconsideration of the Court's decision denying its request for a preliminary injunction. While the motion for reconsideration was pending, Puff Hookah also filed an emergency motion to bar construction or demolition activity at the property. On May 5, the Court issued an order setting the matter for hearing on May 14, 2014 and directing the parties to maintain the status quo until the hearing. The Court also allowed Defendant Karch, LLC and interested nonparties to respond to the reconsideration and emergency motions. The same day Puff Hookah filed another emergency motion seeking clarification whether the Court's status quo order applied to

nonparties Orchard Lake Green, LLC and Thomas Murray, who apparently are the new owners of the disputed portion of the property and who are engaging in demolition activities that Puff Hookah claims are adversely affecting its business. At the request of the parties, the Court expedited the hearing to May 8, 2014 and heard the parties' arguments on the reconsideration and emergency motions.

The Court will first address Puff Hookah's motion for reconsideration, which is discretionary. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if Puff Hookah identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

Puff Hookah first asserts that the Court's decision was based on Defendant Karch, LLC's misrepresentation that Puff Hookah would have adequate parking available after the construction. Puff Hookah claims that Karch admitted that the parking would be inadequate because Puff Hookah has an occupancy of 50 and there will be only 41 parking spaces available that it will have to share with other tenants. However, Karch denies that it ever admitted that parking would be inadequate. Rather, Karch claims that it informed the Court at the March hearing that Puff Hookah's maximum occupancy is 50 people, the city ordinance only requires Karch to provide 12 parking spaces, and Puff Hookah and its customers will have nonexclusive use of 41 adjacent parking spaces. Based on the evidence presented, Puff Hookah has not demonstrated that Karch misrepresented facts at the preliminary injunction hearing. Further, Puff Hookah's argument presumes that the Court made a factual finding about the adequacy of its parking. To the contrary, the Court concluded that Puff Hookah had not met its burden of demonstrating a likelihood of prevailing on its claim that a reduction in the number of parking

spaces would interfere with its lease or was an infringement of its property rights. As the Court noted in its preliminary injunction decision, Puff Hookah bears the burden of demonstrating grounds for injunctive relief. *Detroit Fire Fighters Assn v City of Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008). The Court will not reconsider its decision on the ground of alleged misrepresentations.

Puff Hookah also claims that the Court misinterpreted Paragraph 36 of the lease regarding Karch's right to change the size or dimension of the common area. Again, the Court did not make factual findings or reach a conclusion regarding Karch's rights under the agreement. Instead, the Court simply noted that the lease appeared to give Karch a unilateral right to reduce the parking lot. The Court considered this provision, along with other factors, and concluded that Puff Hookah had not shown a likelihood of succeeding on the merits. Even if the Court made a definitive interpretation of that lease provision, Puff Hookah fails to show palpable error. Paragraph 36 states that Karch reserves two rights, the first of which is the right to establish and enforce rules and regulations, which is not applicable here. However, the second right is directly on point: Karch reserved the right to "make changes from time to time the size, dimensions, the opening and closing of, and location and type of the common areas and buildings which comprise the Property, in Landlord's sole discretion." Although Paragraph 36 is titled "Rules and Regulations," it does not state that Karch's rights under that paragraph are limited to circumstances where it is establishing or enforcing rules and regulations. Karch's right to change the size or dimension of the common areas can be read independent of its right to establish and enforce rules and regulations. Although it may be inartfully drafted, Paragraph 36 appears to give Karch the unambiguous, unilateral right to reduce the size of the parking lot. Puff Hookah fails to demonstrate that reconsideration is warranted on this ground.

At the hearing, Puff Hookah also reiterates its positions that the lease gives it the right to use the entire parking lot as it currently exists and any reduction in the size of the lot is a breach of its rights under the lease. However, the lease does not grant Puff Hookah a minimum number of parking spaces or expressly state that Puff Hookah has a right to a parking lot of a particular size or dimension. The lease simply states that Puff Hookah has a “non-exclusive right to the parking lot adjacent thereto [its leased space]” without any statement about the size of the lot or the amount of available parking. Puff Hookah asserts that commercial leases do not usually guarantee a certain number of parking spaces or lot size. Assuming that this fact is true, it still would not dictate that the Puff Hookah is entitled to use of the entire lot as it is currently configured or that it is entitled to maintain the lot in its current size or with the current number of parking spaces. The Court cannot imply a covenant in Puff Hookah’s lease that entitles it to “adequate” or “reasonable” parking. MCL 565.5. Puff Hookah has been fortunate to be one of only two users of the existing parking lot due to the high number of vacancies in Karch’s property. Had the property been fully leased, Puff Hookah’s use of the lot would likely have been limited and the available parking for its customers would likely have been much lower than the 50 spaces that it claims is necessary. Based on the evidence presented, Puff Hookah cannot establish its entitlement to a certain size parking lot or a certain number of parking spaces.

In its final argument for reconsideration, Puff Hookah contends that the Court erred in concluding that it had not shown irreparable injury, asserting that its loss of interest the property is irreparable injury as a matter of law. However, the cases it cites do not address irreparable injury or injunctive relief. Puff Hookah cites no case holding that the loss of a possessory property interest constitutes irreparable injury as a matter of law, and this Court’s own search of Michigan law revealed no case addressing this issue. Moreover, Puff Hookah fails to show

palpable error in the Court's conclusion that its injuries can be remedied through money damages. Puff Hookah claims that the loss of parking spaces or the construction will destroy its business, however, it provides no evidence to support this extreme claim. To the extent that Puff Hookah's sales are reduced by the construction or limited parking space, those damages are quantifiable.

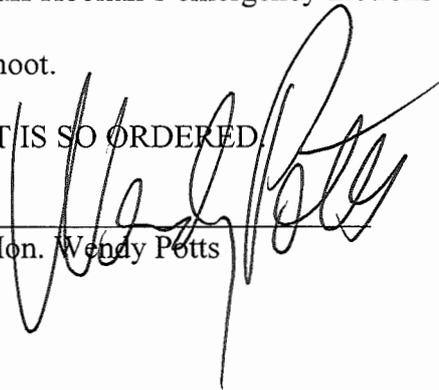
For all of these reasons, Puff Hookah fails to demonstrate palpable error in the Court's decision denying injunctive relief and its motion for reconsideration is denied. Because reconsideration is not warranted and Puff Hookah is not entitled to injunctive relief, the Court rescinds its May 5, 2014 order maintaining the status quo. Puff Hookah's emergency motions to maintain the status quo or to clarify the status quo order are moot.

Dated:

MAY 20 2014

IT IS SO ORDERED

Hon. Wendy Petts

A handwritten signature in black ink, appearing to read 'Wendy Petts', is written over a horizontal line. The signature is cursive and extends above and below the line.