

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 06/26/2017

TIME: 04:27:00 PM

DEPT: 40

JUDICIAL OFFICER PRESIDING: Mark Borrell

CLERK: Denise Cervantes

REPORTER/ERM:

CASE NO: **56-2016-00490376-CU-WM-VTA**

CASE TITLE: **Kracke vs City of Santa Barbara**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Demurrer under submission, now rules as follows:

A copy of the courts ruling and this minute order are jointly served on the parties.

Clerk to give notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Ventura
800 South Victoria Avenue
Ventura, CA 93009

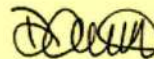
SHORT TITLE: Kracke vs City of Santa Barbara

CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)

CASE NUMBER:
56-2016-00490376-CU-WM-VTA

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 06/26/2017.

Clerk of the Court, by: _____



_____, Deputy

TRAVIS C LOGUE
ROGERS SHEFFIELD & CAMPBELL FIRM
427 E CARRILLO STREET
SANTA BARBARA, CA 93121-2257

ARIEL P CALONNE
CITY ATTORNEY VENTURA
POST OFFICE BOX 1990
740 STATE STREET # 201
SANTA BARBARA, CA 93102-1990

CLERK'S CERTIFICATE OF SERVICE BY MAIL

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 06/26/2017

TIME: 04:29:00 PM

DEPT: 40

JUDICIAL OFFICER PRESIDING: Mark Borrell

CLERK: Denise Cervantes

REPORTER/ERM:

CASE NO: **56-2016-00490376-CU-WM-VTA**

CASE TITLE: **Kracke vs City of Santa Barbara**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion for Preliminary Injunction under submission, now rules as follows:

A copy of the courts ruling and this minute order are jointly served on the parties.

Clerk to give notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Ventura
800 South Victoria Avenue
Ventura, CA 93009

SHORT TITLE: Kracke vs City of Santa Barbara

CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)

CASE NUMBER:
56-2016-00490376-CU-WM-VTA

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 06/27/2017.

2017

Clerk of the Court, by: _____



, Deputy

TRAVIS C LOGUE
ROGERS SHEFFIELD & CAMPBELL FIRM
427 E CARRILLO STREET
SANTA BARBARA, CA 93121-2257

ARIEL P CALONNE
CITY ATTORNEY VENTURA
POST OFFICE BOX 1990
740 STATE STREET # 201
SANTA BARBARA, CA 93102-1990

CLERK'S CERTIFICATE OF SERVICE BY MAIL

VENTURA
SUPERIOR COURT
FILED

JUN 26 2017

MICHAEL D. PLANET
Executive Officer and Clerk
BY: Denise Cervantes Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

THEODORE P. KRACKE, and individual,) Case No.: 56-2016-00490376-CU-WM-VTA
)
Plaintiff/Petitioner,) RULING ON THE MOTION FOR
vs.) PRELIMINARY INJUNCTION TAKEN
) UNDER SUBMISSION ON JUNE 8, 2017
CITY OF SANTA BARBARA, a)
Municipality,)
)
Defendant/ Respondent)

The court, having taken the Motion for Preliminary Injunction under submission on June 8, 2017, now rules as follows:

Petitioner and plaintiff, Theodore P. Kracke ("Kracke"), moves for a preliminary injunction. He seeks an order restraining respondent and defendant, City of Santa Barbara ("the City"), from enforcement of Santa Barbara Municipal Code ("SBMC") section 28.04.395 ("Hotel Ordinance") against all short-term vacation rentals ("STVRs") of residentially-zoned properties in the City's Coastal Zone during the pendency of this action. Alternatively, Kracke seeks to enjoin the City while this case is litigated from enforcing the Hotel Ordinance until the City either (1) obtains a Coastal Development Permit ("CDP") to enforce the Hotel Ordinance; or (2) updates, and obtains certification for, its Local Coastal Program ("LCP"), whichever occurs first. The City opposes the motion.

VENTURA
SUPERIOR COURT
FILED

2018 08 20

BY: _____
Deputy
MICHAEL D. BARNETT
Executive Officer and Clerk

ORIGINAL

Request for Judicial Notice

The City requests that judicial notice be taken of (i) a certified copy of the City Council's Minutes for June 23, 2015 (see Request for Judicial Notice, Exh. A); (ii) a certified copy of the City Council's Agenda Report for June 23, 2015 (id. at Exh. B); (iii) a certified copy of the City Council's Minutes for August 11, 2015 (id. at Exh. C); and (iv) a certified copy of the City Council's Agenda Report for August 11, 2015 (id. at Exh. C). These requests are granted. (Evid. Code, § 452, subd. (c).)

In addition, the court will, on its own motion, take judicial notice of the Chapter 28.44 of the Santa Barbara Municipal Code. (See Evid. Code, § 452, subd. (b).)

Discussion

1. General Rules Applicable to Preliminary Injunctions

Code of Civil Procedure section 526, subdivision (a)(2) authorizes injunctive relief to prevent irreparable injury during the pendency of the litigation, providing, in pertinent part, "[w]hen it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action...."

"In deciding whether to issue a preliminary injunction, a court must weigh two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. [Citation.]...

"The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.] Of course, ' [t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits.' A trial court may not grant a preliminary injunction, regardless of the balance of interim-harm, unless

1 there is some possibility that the plaintiff would ultimately prevail on the merits of the claim.
2 [Citation.]." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.)

3 2. *Has Kracke Shown a Basis Exists to Issue a Preliminary Injunction?*

4 Kracke contends that he is entitled to a preliminary injunction preventing the City from
5 taking enforcement actions against owners of STVRs whose properties are not in compliance
6 with the Hotel Ordinance. Alternatively, if the court does not issue such an injunction outright,
7 Kracke asks the City be restrained until such time as it (1) obtains a CDP authorizing
8 enforcement of the Hotel Ordinance with respect to STVRs in the Coastal Zone or (2) updates its
9 LCP to allow such enforcement and obtains certification from the Coastal Commission for the
10 update. Kracke contends that he is entitled to this provisional relief because he will likely
11 prevail on his petition for a writ of mandate and he and the public will suffer great and
12 irreparable injury if a preliminary injunction is not issued.
13
14

15 In response, the City contends that injunctive relief is not available to Kracke on several
16 grounds. First, the City argues that issuing a preliminary injunction would be against public
17 policy. Next, the City asserts that Civil Code section 3243, subdivision (d) and Code of Civil
18 Procedure section 526, subdivision (b)(4), which preclude the issuance of an injunction
19 restraining public officers from enforcing laws made for the public benefit, bar the provisional
20 relief sought by Kracke. Finally, the City contends Kracke has not established he or the public
21 will suffer irreparable harm if an injunction does not issue. Because the court finds that the
22 City's second contention has merit, it does not address the City's other arguments.
23

24 Subdivision (d) of Civil Code section 3423 provides that an injunction may not be granted
25 "[t]o prevent the execution of a public statute, by officers of the law, for the public benefit."
26 Code of Civil Procedure section 526, subdivision (b)(4) contains similar language, providing that
27 an injunction cannot be granted "[t]o prevent the execution of a public statute by officers of the
28

1 law for the public benefit.” Here, Kracke’s proposed injunction would restrain the City (i.e.,
2 public officers) from enforcing the Hotel Ordinance (i.e., a public statute) which was adopted for
3 the public benefit. His request for injunctive relief falls within the scope of these two statutes.

4 However, as Kracke observes, there are four judicially recognized exceptions to the rule
5 stated in these statutes. They are:

6 “(1) where the statute is unconstitutional and there is a showing of irreparable injury; (2)
7 where the statute is valid but is enforced in an unconstitutional manner; (3) where the statute is
8 valid but, as construed, does not apply to the plaintiff; and (4) where the public official's action
9 exceeds his or her authority. [Citation.]” (*Alfaro v. Terhune* (2002) 98 Cal. App. 4th 492, 501.)

11 Kracke contends that the second exception – where a valid statute is enforced in an
12 unconstitutional manner -- and third exception – where a valid statute is applied against a party
13 to whom it does not apply -- are applicable here. The court disagrees.

15 As to the first of these two exceptions, Kracke argues that the City has “deprived him of due
16 process” by not applying for a CDP. As a consequence, he asserts, he was denied the right to
17 appeal a decision to grant a CDP, if one were granted. (See Pub. Resources Code, § 30603,
18 subd. (a).) Kracke suggests this is a violation of constitutional due process. This argument is
19 unpersuasive. Kracke’s case is predicated on statutory rights, not constitutional rights. Further,
20 the harm which Kracke describes is speculative: it assumes a CDP would be granted.

22 Under the second of the two potential exceptions, a court may enjoin enforcement of a statute
23 as against a specific party if, by its terms, it does not apply to that party. For example, in
24 *MacLeod v. City of Los Altos* (1960) 182 Cal.App.2d 364, it was held that a court could enjoin
25 the enforcement of an ordinance prohibiting merchants from door-to-door solicitations where the
26 respondent city sought to apply the ordinances to individuals going door-to-door seeking
27


1 contributions to a political association. The court concluded that the ordinance did not apply to
2 the conduct alleged.

3 Kracke argues that the Hotel Ordinance does not apply to STVRs and therefore the ordinance
4 does not apply to him as the owner of STVRs and a proprietor of a STVR-related business. From
5 this he contends that the court may enjoin the City from applying the Hotel Ordinance to him.
6 But this argument is not supported by the language of the ordinance. The Hotel Ordinance
7 provides in part: "Hotel: 'A building . . . which is . . . occupied as the temporary abiding place
8 of individuals for less than thirty (30) consecutive days . . .'" A STVR could fall into this
9 definition. Therefore, the court cannot conclude that the Hotel Ordinance does not, on its face,
10 apply to STVRs.
11

12 For these reasons, the court finds that Kracke's request for a preliminary injunction runs
13 afoul of Civil Code section 3243, subdivision (d) and Code of Civil Procedure section 526,
14 subdivision (b)(4), and it is, therefore, denied.
15

16 The clerk is directed to give notice.

17
18 Date: June 26, 2017

19 
20 Mark S. Borrell
21 Judge of the Superior Court
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**
2 *CCP § 1012, 1013a (1), (3) & (4)*

3 STATE OF CALIFORNIA)
4 COUNTY OF VENTURA) ss.
5)

6 **Case Number: 56-2016-490376-CU-WM-VTA**

**Case Title: Kracke v. City of Santa
Barbara**

7 I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a
8 party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009.
9 On the **June 26, 2017**, I served the within:

10 **RULING ON THE MOTION FOR PRELIMINARY**
11 **INJUNCTION TAKEN UNDER SUBMISSION ON JUNE 8, 2017**

12 on the following named party(ies)

13 Ariel P. Calonne
14 Tom R. Shapiro
15 John S. Doimas
16 Robin Lewis
17 740 State Street, Ste. 201
18 P.O. Box 1990
19 Santa Barbara, CA 93102

Travis C. Logue
Jason W. Wansor
ROGERS, SHEFFIELD, &
CAMPBELL, LLP
427 East Carrillo Street
Santa Barbara, CA 93101

20 ☐ **BY PERSONAL SERVICE:** I caused a copy of said document(s) to be hand delivered to the
interested party at the address set forth above on _____ at _____ a.m./p.m.

21 ☒ **BY MAIL:** I caused such envelope to be deposited in the mail at Ventura, California. I am
22 readily familiar with the court's practice for collection and processing of mail. It is deposited with the
U.S. Postal Service on the dated listed below.

23 ☐ **BY FACSIMILE:** I caused said documents to be sent via facsimile to the interested party at the
24 facsimile number set forth above at _____ a.m./p.m. from telephone number **(805) 477-5893**

25 I declare under penalty of perjury that the foregoing is true and correct and that this document is
26 executed on **June 26, 2017**, at Ventura, California.

27 MICHAEL D. PLANET, Superior Court,
Executive Officer and Clerk

28 By: _____

Denise Cervantes, Judicial Secretary