

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

NANCY NEMHAUSER and
LUBOMIR JASTRZEBSKI,

CASE NO.: 5:18-cv-87-JSM-PRL

Plaintiffs,

vs.

CITY OF MOUNT DORA, FLORIDA,
a municipal corporation

Defendant.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR A TEMPORARY RESTRAINING ORDER**

On February 20, 2018, Plaintiffs' Nancy Nemhauser and Lubomir Jastrzebski filed a Motion for a Temporary Restraining Order, seeking to stop enforcement of the City of Mount Dora's code of ordinances in a manner that violates Plaintiffs' constitutional rights (Doc. 2). Having considered the parties' motion, memorandum of law, verified complaint, declarations, and the ordinances at issue, the Court concludes that the motion is warranted.

To obtain a TRO, a movant must show: (1) a substantial likelihood of success on the merits; (2) that the preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant; and (4) that the preliminary injunction would not be adverse to the public interest. *Dawson v. Ameritox, Ltd.*, 571 F. App'x 875, 877 (11th Cir. 2014) (citing *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010)). Federal Rule of Civil Procedure 65(b)(1)

allows the Court to enter a TRO without notice to the adverse party or its attorney only if (a) facts in an affidavit clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (b) the movant's attorney certifies in writing that any efforts made to give notice any why such notice should not be required. Plaintiffs have met these requirements.

Plaintiffs have demonstrated a likelihood of success on the merits of their First Amendment, Equal Protection, and Due Process claims. The City of Mount Dora would irreparably harm the Plaintiffs by continuing its enforcement each day on the Plaintiffs with daily growing fines and with potential imposition of a lien on the home at issue. Because the continued violation of constitutional rights causes irreparable harm, Plaintiffs have demonstrated that without a temporary restraining order they will suffer immediate and irreparable injury before the City of Mount Dora can be heard in opposition to the motion. That harm to the Plaintiffs is not outweighed by any interest to the public. To the contrary, it is in the public interest to temporarily restrain enforcement of the underlying sign ordinances in order to avoid the chilling of the First Amendment rights of all individuals in the City of Mount Dora who wish to engage in speech censored by the City's sign law.

It is therefore ORDERED and ADJUDGED:

1. The Plaintiffs' Motion for Temporary Restraining Order (Doc. 2) is GRANTED.

2. Defendants and all persons acting on behalf of the City of Mount Dora are hereby temporarily restrained from taking any action to enforce Mount Dora Land Development Code Chapter VI, Section 6.7 and Chapter VIII against the Plaintiffs or any

other interested party for the existing mural/sign posted on the property located at 306 West Sixth Avenue, Mount Dora, Florida.

3. The daily accrual of fines imposed on the property at the February 1, 2018, hearing of the code enforcement special magistrate for violating these ordinances is hereby halted and stayed.

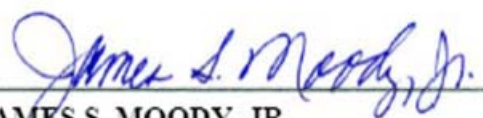
4. This TRO will remain in effect for 14 days from the time of this order, or until this Court may rule on the Plaintiffs' motion for preliminary injunction, whichever is sooner. This Court may, however, for good cause, extend that period of time. The City of Mount Dora may also consent to an extension of this restraining order.

5. The bond requirement is waived. No measurable costs or damages are imposed on the City of Mount Dora by the mural at issue.

6. Plaintiffs' Motion for Preliminary Injunction (Doc. 3) is referred to Magistrate Judge Philip R. Lammens to conduct a hearing and issue a Report and Recommendation. The hearing will be held **March 6, 2018, at 10 a.m.** in the United States Courthouse, Courtroom 1A, Golden-Collum Memorial Federal Building & U.S. Courthouse, 207 N.W. Second Street, Ocala, Florida.

7. Plaintiffs are directed to immediately serve the City of Mount Dora with a copy of this Order.

DONE and ORDERED this 21st day of February, 2018.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE