

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE NATIONAL POST OFFICE  
COLLABORATE, CENTER FOR ART AND  
MINDFULNESS, INC., FORMERLY  
KNOWN AS THE LOWER FAIRFIELD  
ART CENTER, INC., AND KAYSAY H.  
ABRHA, AN INDIVIDUAL

Plaintiffs,

v.

PATRICK R. DONAHOE, POSTMASTER  
GENERAL OF THE UNITED STATES  
POSTAL SERVICE, AND THE UNITED  
STATES POSTAL SERVICE

Defendants.

CIVIL ACTION NO.  
3:13-CV-01406 (JBA)

September 26, 2013

**MEMORANDUM OF DECISION GRANTING PLAINTIFFS' EX PARTE APPLICATION  
FOR TEMPORARY RESTRAINING ORDER [Dkt. 2]**

Before the court is an *Ex Parte* Application For Temporary Restraining Order And Motion For Preliminary Injunction filed on September 25, 2013 by The National Post Office Collaborate, Center For Art and Mindfulness, Inc., Formerly Known As The Lower Fairfield Art Center, Inc. (the "Center"), and Kaysay H. Abrha (collectively the "Plaintiffs") against Patrick R. Donahoe, Postmaster General Of The United States Postal Service, and The United States Postal Service. (collectively the "Postal Service") pursuant to Fed. R. Civ. P. 65. Plaintiffs seek an order enjoining the Postal Service its agents and employees from transferring or alienating their title in and to the Stamford Post Office, in particular a scheduled sale of the facility scheduled for September 25, 2013.

Plaintiffs cited the imminent sale and their inability to speak to a Postal Service official in justification of its application for an *ex parte* order. Plaintiffs' counsel certifies that irreparable harm to Plaintiffs would likely result if Defendants are allowed to transfer and/or alienate title to the Stamford Post Office, or alter or damage the Stamford Post Office. The Court declined to issue an *ex parte* order on the basis that the Postal Service is publically known to be represented by the United States Attorney and that it was possible to give the Postal Service notice through its counsel. Plaintiffs gave notice to the Postal Service and a hearing was scheduled for that day and which, at the request of the counsel for the Postal Service, was conducted telephonically on the evening of the 25<sup>th</sup> of September, 2013.

The Plaintiffs assert that the Court has federal question jurisdiction alleging that "39 USC. § 403(c) (general duty of [the Postal Service] to not show undue preference or unreasonable discrimination), 39 USC § 409, and 28 USC § 1331 (questions of federal law, including the National Environmental Policy Act, 42 USC § 4321, et seq., and National Historic Preservation Act, 16 USC § 470), § 1361 (mandamus), § 1367 (commerce), § 2201 (declaratory judgments)", [Compl. ¶ 7], confer jurisdiction. The Postal Service has not challenged the Court's jurisdiction.

The Complaint alleges that the Center was the high bidder in an auction in 2012 to purchase the Stamford Post Office with the intent of preserving its historically significant architecture and artifacts for the public benefit. The Plaintiff Kaysay H. Abrha is a Stamford resident who does not now, but

previously possessed Post Office Box 1034 at the Stamford Post Office. The Defendant Patrick R. Donahoe is the Postmaster General and Chief Executive Officer of the United States Postal Service, an instrumentality of the U.S. Federal Government. Defendant the United States Postal Service ("USPS" or "Postal Service") is "an independent establishment of the executive branch of the Government of the United States," with the power to "be sued in its official name." 39 USC §§ 201 & 401(1). The Plaintiffs rely upon the Complaint, the affidavit of Drew Backstrand verifying the allegations in their complaint, and their memorandum of law.

On the issue of standing, Plaintiffs allege that they "have standing to bring this action as interested parties and members of the local community who will be adversely affected by the Defendants' actions. Plaintiffs also assert that they have standing via the doctrine of associational standing because they represent members of the local community who will be adversely affected by the Defendants' actions." [Compl. ¶ 9.] While the Plaintiffs do not allege here that they would be affected in any manner different than other members of the community generally, the assertion that the Center has an interest in the Stamford Post Office by virtue of having been the winning bidder in a 2012 auction asserts a property interest sufficient to conclude that at least one Plaintiff has standing.

Plaintiffs assert claims that the Stamford Post Office is federal property listed on the National Register of Historic Places and is an architecturally significant structure incorporating historically significant artifacts which would

be destroyed or alienated from the public in contravention of federal environmental law (Count One), historic preservation law (Count Two), the public trust doctrine which Plaintiffs assert restricts states from alienating waterways and natural resources (Count Three), and finally a theory of “undue preference and unreasonable discrimination” (Count Four). While the third and fourth counts appear dubious, the first two counts raise colorable federal question claims.

To obtain a preliminary injunction, the moving party must demonstrate (1) irreparable harm absent injunctive relief; (2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly toward the party requesting the preliminary relief. *Doninger v. Niehoff*, 527 F.3d 41, 47 (2d Cir. 2008). To establish irreparable harm a party seeking such relief must show that “there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation.” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quotations omitted). Injuries that are “fully remedied by monetary damages do not constitute irreparable harm.” *In re Taub*, 470 B.R. 273, 27 (citing *Borey v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 934 F.2d 30, 34 (2d Cir. 1991)). “[A]bsent special circumstances, the sale of commercial property does not create an irreparable harm, since any harm due to the sale of the property or interference with the business can be remedied with monetary damages.” *Javino v. Pergament*, No. 13-CV-1951, 2013 U.S. Dist. LEXIS 67045, at \*2, 2013 WL 1952639 (E.D.N.Y. May 10, 2013) (citing *In re*

*Taub*, 470 B.R. at 278; *Dexter 345 Inc. v. Cuomo*, No. 11 CIV. 1319, 2011 U.S. Dist. LEXIS 48202, at \*5, 2011 WL 1795824 (S.D.N.Y. May 3, 2011), *aff'd*, 663 F.3d 59 (2d Cir. 2011)). The Center's loss of the architecturally and historically significant Stamford Post Office is a special circumstance which would cause irreplaceable harm because of the unique and irreplaceable character of the building. The Court recognizes that the Postal Service contends that its conduct was lawful and further that where a party seeks a preliminary injunction that challenges "government action taken in the public interest pursuant to a statutory or regulatory scheme" that would "alter, rather than maintain, the status quo," the moving party must demonstrate not only irreparable harm, but also a "clear" or "substantial" likelihood of success on the merits. *VIP of Berlin, LLC, v. Town of Berlin*, 593 F.3d 179, 185-86 (2d Cir. 2010) (citing *Jolly v. Coughlin*, 76 F.3d 468, 473-74 (2d Cir.1996)). The facts alleged by the Plaintiffs cause the equities to tip in their favor as they assert that the Postal Service is acting neither in the public interest nor pursuant to a statutory or regulatory scheme, and that granting the restraining order would maintain the *status quo*.

The purpose of a preliminary injunction is to preserve the *status quo* pending a resolution of a controversy. *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 972 (2d Cir. 1989) (citing *Thornburgh v. Am. College of Obstetricians and Gynecologists*, 476 U.S. 747, 755 (1986)). The very pendency of this action clouds the Post Office's title and would cloud the title of any party to which it transferred the property. Such a cloud effectively restrains alienation in

and of itself. The *status quo* is clearly achieved by temporarily restraining the transfer until such time as the issues may be deliberately adjudicated.

Therefore, a temporary restraining order is hereby issued, enjoining each of the Defendants as well as their agents and assigns, from, directly or indirectly, transferring or otherwise alienating any of Defendant's title or interest in and to the Stamford Post Office to any person or entity whatsoever pending a hearing and ruling on the Plaintiff's application for a preliminary injunction or further order of the court.

Federal Rule of Civil Procedure 65 authorizes the Court to issue a temporary restraining order, but pursuant to subsection (c) of that Rule:

"The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security."

Fed. R. Civ. P. 65(c).

Defendants averred during the telephonic hearing on September 25 that they were contractually bound to sell the Stamford Post Office on Wednesday September 25, 2013 for four million, three hundred thousand dollars (\$4,300,000.00), and sought security to cover any loss from the issuance of a temporary restraining order. Should the sale of the property not occur as scheduled, particularly if the sale is delayed by litigation, there is a substantial risk that the buyer would not purchase the property even if the Defendants prevail. In addition, the Defendants have and will incur expenses in defense of the action. The claims asserted are novel and the facts are undeveloped. These

**facts portend protracted litigation. Accordingly, the Court orders the Plaintiffs to post with the Clerk of the Court a bond or other security in the amount of four million five hundred thousand dollars (\$4,500,000.00) to pay the costs and damages sustained by the Postal Service should it be found to have been wrongfully enjoined or restrained.**

**IT IS SO ORDERED.**

***/s/***  
**Hon. Vanessa L. Bryant**  
**United States District Judge**

**Dated at Hartford, Connecticut: September 26, 2013**