

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

TAKOMA PARK – SILVER SPRING
COOPERATIVE, INC.

Plaintiff

vs.
NEIGHBORHOOD
DEVELOPMENT COMPANY, L.L.C., et al.,

Civil Action No. 485554-V

Defendants

**PLAINTIFF’S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION AGAINST DEFENDANTS NEIGHBORHOOD DEVELOPMENT COMPANY,
L.L.C. AND NDC TAKOMA JUNCTION, L.L.C.**

Takoma Park – Silver Spring Cooperative, Inc. (“Plaintiff” or “Co-op”), by and through undersigned counsel, pursuant to Maryland Rule 15-504 files this Motion for a Temporary Restraining Order and Preliminary Injunction seeking relief against Defendant Neighborhood Development Company, L.L.C. and its affiliate, Defendant NDC Takoma Junction, L.L.C. (together “NDC”). Plaintiff incorporates herein by reference the concurrently filed Memorandum of Law in support of this Motion, along with its supporting Declarations Under Oath and other supporting exhibits:¹

1. That this Court issue an immediate *ex parte* temporary restraining order granting the following relief to Plaintiff:
 - a. NDC shall be enjoined from preventing or interfering with the Co-op’s receipt of deliveries on a parking lot that is subleased from NDC (“Takoma Junction Parking Lot”) for the duration of the temporary restraining order and any extension thereto; and

¹ This Motion and the Memorandum together exceed the 15-page combined limit for a Track 3 Motion by 2 pages. Plaintiff seeks leave of court to file the additional two pages, as this motion seeks equitable relief that requires analysis of the four factors necessary to secure temporary *ex parte* injunctive relief. Plaintiff took pains to be clear and concise with its wording.

- b. NDC shall be enjoined from evicting the Co-op from the Takoma Junction Parking Lot, and that its eviction notice date April 15, 2021 shall have no force or effect for the duration of the temporary restraining order and any extension thereto; and
 - c. That the Court grant a waiver of bond pursuant to Maryland Rule 15-503 on the grounds that Plaintiff will suffer immediate an irreparable injury and Defendants have no financial exposure if the injunction is granted (*i.e.*, they will continue to receive rent and be protected from liability by extensive liability insurance and indemnification provisions as support by the Houston affidavit) – or – in the alternative order that Plaintiff escrow 12 months of rental payments with undersigned counsel pending final judgment to be applied to any damages that may be awarded to Defendants (trial is expected in 1 year); and
 2. That this Court set a hearing date on Plaintiff's Motion for Preliminary Injunction seeking the same relief; and
 3. That following a hearing on Plaintiff's Motion for Preliminary Injunction that its grant a preliminary injunction that grants the following relief to Plaintiff:
 - a. NDC shall be enjoined from preventing or interfering with the Co-op's receipt of deliveries on a parking lot that it subleases from NDC ("Takoma Junction Parking Lot") until a final determination on the merits of the above-captioned case is entered; and
 - b. NDC shall be enjoined from evicting the Co-op from the Takoma Junction Parking Lot, and that its eviction notice date April 15, 2021 shall have no force or effect until a final determination on the merits of the above-captioned case is entered;
 4. Plaintiff further requests that this Court enter such further and other equitable relief as it deems necessary and proper to achieve Plaintiff's request for relief.

A proposed order is enclosed.

Respectfully Submitted,

Michele McDaniel Rosenfeld

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Certificate of Service

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 6th day of May, 2021 and sent by electronic mail to:

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ORDER

Upon consideration of the Motion For A Temporary Restraining Order And Preliminary Injunction Against Defendants Neighborhood Development Company, L.L.C. And NDC Takoma Junction, L.L.C. filed the 6th day of May, 2021 by Plaintiff The Takoma Park – Silver Spring Cooperative, Inc. (“Co-op”); and the docket reflecting Plaintiff’s Rule 1-351(b) Certification of Notice to all Defendants of a requested *ex parte* ruling; and having heard argument in an *ex parte* hearing on this matter, the Court hereby FINDS AND ORDERS as follows:

1. Based upon the Affidavit of Co-op Manager Michael Houston and supporting documents provided along with the Affidavit, this Court finds that based on the specific facts contained therein that immediate, substantial, and irreparable harm will result to Plaintiff Co-op seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction, and thus satisfies the standards contained in Maryland Rule 15-504(a) for granting a temporary restraining order;
2. Pursuant to Maryland Rule 15-502(c)(3) and Rule 15-502(e), the Court further finds that the Co-op will suffer immediate harm if it cannot receive deliveries in the Takoma Junction Parking Lot in the form of lacking the ability to receive the delivery of store goods and products in a manner that does not create potential safety hazards for delivery drivers, customers and store employees; loss of revenue through inability to stock products; loss of goodwill through an

inability to offer goods and products customers have come to expect; and the potential imminent need to close the store for lack of goods to sell.

3. Pursuant to Maryland Rule 15-502(c)(3) and Rule 15-502(e) the Court finds that the potential for personal or property injury resulting from unsafe delivery conditions creates an immediate irreparable harm, and based on the Houston Affidavit, lacking adequate deliveries could result in store closure in as little as 3 – 4 days. Balanced against the lack of harm to Defendants in that they will continue to receive rent from the Co-op and have liability protection in the form of an indemnification provision and are co-insured against liability in the amount of a million dollars in provided by the Co-op's insurance cover, this Court further finds that Defendants will suffer no injury if this Court maintains the status quo on a temporary basis. For this reason, the Court finds that substantial injustice would result if an injunction did not issue and that no bond is required.
5. Accordingly, Court grants the following injunctive relief:
 - a. NDC shall be enjoined from preventing or interfering with the Co-op's receipt of deliveries on a parking lot that is subleases from NDC ("Takoma Junction Parking Lot") for the duration of the temporary restraining order and any extension thereto; and
 - b. NDC shall be enjoined from evicting the Co-op from the Takoma Junction Parking Lot, and that its eviction notice date April 15, 2021 shall have no force or effect for the duration of the temporary restraining order and any extension thereto.
4. Pursuant to Maryland rule 15-502(1), this Order is issued on _____ and _____AM/PM;
5. Pursuant to to Maryland Rule 15-502(4), a party or any person affected by the order may apply for a modification or dissolution of the order on two days' notice, or such shorter notice as the court may prescribe, to the party who obtained the order; and
6. Pursuant to Maryland Rule 15-502(5) this order shall expire no later than ten days after issuance for a resident and not later than 35 days after issuance for a nonresident.

7. A hearing date Plaintiff's Motion for Preliminary Injunction is set for _____ at _____ AM/PM; and
8. Plaintiff shall promptly file this Order with the clerk.

Montgomery County Circuit Court Judge