NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1320

TOWN OF BRUSLY

VERSUS

GEORGE M. "SKIPPER" GRADY

Judgment Rendered: May 4, 2007

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On Appeal from the Eighteenth Judicial District Court
In and For the Parish of West Baton Rouge
State of Louisiana
Docket No. 35,250

Honorable William C. Dupont, Judge Presiding

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Thomas W. Acosta, Jr. Jamie E. Fontenot Port Allen, LA	Counsel for Plaintiff/Appellee Town of Brusly
Stephen M. Irving Baton Rouge, LA	Counsel for Defendant/Appellant George M. "Skipper" Grady

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Parro, J., concurs.

McCLENDON, J.

In this zoning case, defendant, George M. "Skipper" Grady, appealed the trial court's grant of a preliminary injunction in favor of plaintiff, the Town of Brusly. Finding that the Town of Brusly did not meet its burden of proof, we reverse the judgment granting the preliminary injunction and remand.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Grady owned a building in the Town of Brusly (town) that was zoned C-1.[1] He rented part of the building to a music teacher, who used the space as a music shop and a residence, and rented another part of the building to a family that was building a house in the area.

The town filed a petition for an injunction to stop Mr. Grady, or any corporations or agents acting on his behalf, from leasing to residential tenants the building zoned as C-1, light commercial. The town asserted that its zoning ordinances did not permit residential leasing in an area zoned C-1. Mr. Grady disagreed with the town's interpretation of the ordinances. He argued that the ordinances did not specifically prohibit him from leasing to residential tenants, and did not contain language making the list of permitted uses an exclusive one. After a hearing, the trial court found that Mr. Grady violated the applicable zoning ordinances. By a judgment signed on March 13, 2006, the trial court issued a preliminary injunction prohibiting Mr. Grady, individually or as owner or manager of any entity, from leasing the premises for residential uses. Mr. Grady appealed.

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[1] Although the record contains assertions that a corporation may be the true owner of the property in question, the claim is supported only by contradictory statements and inferences. At the hearing, the Mayor of Brusly testified that he believed that a corporation owned the property, and then stated that Mr. Grady owned the property. When Mr. Grady was asked if he or a corporation owned the property, Mr. Grady simply answered, "Yes, I do." Thus, from this particular record, the owner, or at least the person acting as the lessor, appears to be Mr. Grady. We note, however, that a corporation is a legal entity separate and distinct from its shareholders, employees, or agents. See LSA-C.C. art. 24.

APPLICABLE LEGAL PRECEPTS

In **Lozes v. Waterson**, 513 So.2d 1155, 1157 (La.1987), the Louisiana Supreme Court stated that:

> a zoning ordinance, being in derogation of rights of private ownership and curtailing and limiting the use of property, must be strictly construed in favor of the property owner, and where exemptions appear in favor of a property owner, these exemptions should be liberally construed in favor of the property owner. Additionally, we have held that a zoning ordinance which is subject to more than one reasonable interpretation should be construed in favor of unrestricted use of property. (Citations omitted.)

The Brusly zoning ordinances are contained in the Brusly, Louisiana Code. The applicable zoning ordinances provide, in pertinent part, as follows:

> Section 19.21. Brusly land use principles
>
> (c) Commercial:
>
> . . .
>
> (7) Uses compatible with commercial are medium and high density housing, institutions such as hospitals, colleges and universities, research organizations, administrative community facilities, and agriculture;
>
> (8) Uses incompatible with commercial are heavy industry and low density housing . . . . (Emphasis added.)
>
> Section 19.32. Zoning district schedule
>
> 10. C-1 Light Commercial
>
> Uses Permitted: All uses permitted in B-1 Transition, and other similar limited commercial uses including but not limited to the following, where the use is determined to be compatible with the Brusly Land Use Plan, the Brusly Land Use Principles and other criteria as set forth in C-1 by the Zoning Commission and Town Council. (Emphasis added.)

The C-1 Light Commercial portion of the zoning ordinance also lists various specifically named permitted uses, including animal hospitals, drug stores, and music schools; and lists several prohibited uses, including adult video

stores and freight trucking terminals. The use at issue here, renting to multi-family residents, is not named in the approved or prohibited uses for C-1 Light Commercial or for B-1 Transition.

Under Section 19.32, 1., residential zoning is divided into eight categories, as follows: R-1 through R-3, Single-Family Residential; R-4, Multi-Family Residential; R-5, Zero Lot Line Residential; R-6, Town House Residential; R-7, Mobile Home Park District; and R-8, Mobile Home Subdivision. Each category lists permitted uses. With the exception of R-7, each residential category also states that "[a]ll uses not specifically permitted herein" are prohibited. The provisions concerning B-1 and C-1 do not contain that language.

An injunction shall issue "where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law . . . ." LSA-C.C.P. art. 3601. A preliminary injunction is an interlocutory judgment designed to maintain the *status quo* pending a trial on the merits for permanent injunctive relief. **Freeman v. Treen**, 442 So.2d 757, 763 (La.App. 1 Cir. 1983). Generally, an applicant for preliminary injunction must (1) show that he will suffer irreparable harm and (2) make a prima facie showing that he will prevail on the merits. **Brennan v. Board of Trustees for University of Louisiana Systems**, 95-2396, p.6 (La.App. 1 Cir. 3/27/97), 691 So.2d 324, 328. However, where the threatened action is shown to be in direct violation of a prohibitory law, it is not necessary for the plaintiff to show irreparable injury. **Jones v. Board of Ethics for Elected Officials**, 97-2686, 97-2854, p. 6 (La.App. 1 Cir. 2/20/98), 709 So.2d 841, 845, writs denied, 98-0750 (La. 5/8/98), 718 So.2d 433 & 98-0782 (La. 5/8/98), 719 So.2d 51. The issuance of a preliminary injunction

lies within the discretion of the trial court, but that discretion is reviewable if erroneously exercised. **Freeman**, 442 So.2d at 761.

ANALYSIS

Before the petition was filed by the town, Mr. Grady leased space for a combined commercial and residential use to the music teacher, and, as a residence, to a family not related to the music teacher. Leasing of C-1 space to multi-family residents is neither specifically prohibited nor permitted under the Brusly Zoning Ordinances. However, the permitted uses listed in Section 19.32., 10. C-1, do include uses "determined to be compatible with . . . the Brusly Land Use Principles . . . ." Those land use principles, contained in Section 19.21 (c), state that "[u]ses compatible with commercial are medium and high density housing . . . ."

Unfortunately, the terms medium and high density housing are not defined. In the absence of definitions, the ordinances do not provide a clear answer to the question before us, and thus, we find that they are ambiguous in that regard. In attempting to find an interpretation and answer that harmonizes the various sections, we found some guidance in Section 19.32., 1., with its eight residential housing categories. The first category, R-1, permits a "Single-family dwelling," and other ancillary uses, for example, schools, churches, and private clubs. Given the overall scheme contained in the eight categories, the "Single-family dwelling" could be described as low density. R-2 allows the uses permitted in R-1 and allows garage apartments, without limiting the number of families permitted. The permitted uses for R-3 include dwellings containing two to four families. The next category, R-4, is designated multi-family, and allows "multiple" families. With more than one family occupancy contemplated, R-2, R-3, and R-4 could reasonably be considered medium density. R-5 applies to zero lot line

property, and permits detached residential units, but without specifying a minimum or maximum number of units. Thus, depending on the number of units, an R-5 development would most likely range from medium to high density. R-6, town house residential, R-7, mobile home park, and R-8, mobile home subdivision, are also developments that could reasonably be classified as medium to high density housing, depending on the number of units in the particular development.

From our reading of the ordinances *in pari materia*, and considering the supreme court's admonition to construe an ordinance subject to more than one reasonable interpretation in favor of the landowner's unrestricted use of his property, we find that medium to high density housing may reasonably be interpreted as including multi-family housing. See **Lozes**, 513 So.2d at 1157; see also LSA-C.C. art. 12 (To interpret ambiguous law, examine the text of the law as a whole and the context in which it occurs). Medium to high density housing is compatible with commercial zoning. Brusly, Louisiana Code, Zoning Ordinance, Section 19.21, (c). Permitted uses for C-1, Light Commercial, include uses "determined to be compatible with . . . the Brusly Land Use Principles . . . ." Brusly, Louisiana Code, Zoning Ordinance, Section 19.32., 10. C-1. Thus, multi-family housing may reasonably be determined to be included in the compatible uses permitted by Section 19.32, 10. C-1, which governs a building in a light commercial zone.

CONCLUSION

Based on our finding, the town failed to make a prima facie showing that it would likely prevail on the merits. Thus, on the record before us, the trial court erred in granting the preliminary injunction.[2] We reverse the

[2] We also note that the preliminary injunction could be read to require a change in the status quo, that is, the lessees could be evicted, rather than preserving the status quo pending a trial on the merits of the petition. Although the parties discussed an agreement

judgment and remand the case for further proceedings on the application for a permanent injunction. See **Kilbourne v. Hunt**, 276 So.2d 742, 745 (La.App. 1 Cir. 1973). The costs of the appeal are assessed to plaintiff-appellee, the Town of Brusly.

REVERSED AND REMANDED.

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to waive a final trial, and allow the court to rule on whether to grant a permanent injunction, no final agreement appears of record.