

CAUSE NO. 24-CV-1738

MERGER THREE, LLC, VODOO	§	IN THE DISTRICT COURT OF
HUT, LLC, 605, LLC, BK STEPHENS	§	
INVESTMENT, LLC, AND THE GRECO,	§	
LLC	§	
	§	
<i>Plaintiffs,</i>	§	GALVESTON COUNTY, TEXAS
	§	
v.	§	
	§	
CITY OF KEMAH, TEXAS,	§	
	§	
<i>Defendant.</i>	§	405th JUDICIAL DISTRICT

ORDER GRANTING TEMPORARY INJUNCTION

After considering the application for a temporary injunction by Plaintiffs Merger Three, LLC; Voodoo Hut, LLC; 605, LLC; BK Stephens Investment, LLC; and The Greco, LLC dba Bakkhus Taverna Greek Restaurant and Bar, against Defendant, City of Kemah, as well as the pleadings, briefs, evidence, case law, and arguments of counsel, the Court FINDS as follows:

The Court finds that Plaintiffs have valid causes of action against Defendant City of Kemah, Texas, and that Plaintiffs have a probable right of recovery on their causes of action.

The Court further finds that Plaintiffs have the right to seek injunctive relief, pursuant to Tex. Civ. Prac. & Rem. Code §§ 65.011(5) and 65.015, because each of the Plaintiffs own or lease real property abutting 6th Street between Bradford Ave. and Kipp Ave, and the City of Kemah's closure 6th Street between Bradford Ave. and Kipp Ave. has caused and will continue to cause irreparable harm to their real property and their businesses.

The Court further finds that Plaintiffs have demonstrated that they will suffer imminent and irreparable harm in the absence of this Temporary Injunction due to Kemah's closure of 6th Street between Bradford Ave. and Kipp Ave. in Kemah, Texas, if a Temporary Injunction is not granted.

The Court further finds that Kemah is a Type-A General Law municipality that is subject to Tex. Transp. Code § 311.008, which provides that "the governing body of a general-law municipality by ordinance may vacate, abandon, or close a street or alley of the municipality if a petition signed by all the owners of real property abutting the street or alley is submitted to the governing body."

The Court further finds that Kemah closed 6th Street between Bradford Ave. and Kipp Ave. without a “petition signed by all the owners of real property abutting the street or alley” as required by Tex. Transp. Code § 311.008.

The Court further finds that Plaintiffs have suffered and will continue to suffer irreparable injury, loss, and damage if Kemah is not enjoined to re-open 6th Street between Bradford Ave. and Kipp Ave. and restrained from closing 6th Street or otherwise blocking or obstructing vehicular travel and access to and from their real property and businesses on 6th Street between Bradford Ave. and Kipp Ave. in Kemah, Texas.

Plaintiffs’ injury is irreparable because the closure of 6th Street between Bradford Ave. and Kipp Ave. has caused and will continue to cause Plaintiffs to lose the right to use and enjoy their real property and operate their businesses, which will result in loss of goodwill, employees, customers, tenants, and other irreparable harm.

There is a substantial likelihood that Plaintiffs will prevail on their declaratory judgment claim seeking to declare that Resolution 2024-10 was passed by Kemah City Council on April 3, 2024, without legal authority under Tex. Transp. Code § 311.008, and, therefore, Resolution 2024-10 and all actions taken pursuant thereto, including the closure of 6th Street between Bradford Ave. and Kipp Ave., are void as a matter of law.

For these reasons, the Court ORDERS the following:

Defendant City of Kemah, Texas and its officers, agents, servants, employees, and attorneys, and all persons acting in concert with them are hereby enjoined and restrained from closing or otherwise installing any signs, barricades, bollards, and the like that would in any way prevent, impair, or restrict Plaintiffs’ and the public’s right of access to 6th Street between Bradford Ave. and Kipp Ave. in Kemah, Texas until final judgment is rendered in this cause.

The Court further ORDERS the City of Kemah to remove all bollards, signage, striping, and any other obstructions that prevent or prohibit Plaintiffs and the public from accessing 6th Street between Bradford Ave. and Kipp Ave. by all means of travel that were permissible before Resolution 2024-10 was passed on April 3, 2024.

Defendant City of Kemah and its officers, agents, servants, employees, and attorneys and other persons who are in active concert or participation with them are enjoined and restrained from issuing citations or otherwise enforcing Kemah Resolution No. 2024-10 until final judgment is rendered in this cause.

Maintaining the status quo that existed prior to the street closure by the City of Kemah pending a trial on the merits is equitable and in the interest of justice and the public interest.

The clerk shall issue notice to Defendant, City of Kemah, Texas, that final trial, and plaintiff's application for permanent injunction, is set for 27 January 2025, at 9:00 a.m./p.m.

The Court sets bond in the amount of \$750.00. Plaintiffs previously posted a cash deposit in lieu of bond in the amount of \$750.00 to obtain the Temporary Restraining Order in this cause, which was accepted by and remains on deposit with the Clerk of this Court. The Court finds that said \$750.00 cash deposit is sufficient to satisfy the bond set by the Court in this Temporary Injunction and that no additional deposit is required.

Signed on November 1, 2024, at 10:26 a.m./p.m.


PRESIDING JUDGE