

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

G.W. ACQUISITION CO., LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:22-cv-255 (LMB/JFA)
	)	
PAGELAND LIMITED LIABILITY	)	
COMPANY, et al.,	)	
	)	
Defendants.	)	

TEMPORARY RESTRAINING ORDER

The Court has reviewed the exhibits and memorandum in support of plaintiff GW Acquisition Co., LLC's ("GWA") Motion for Temporary Restraining Order against defendants Jon Sanders Brower, Barbara Brower, and Pageland Limited Liability Company ("Pageland LLC"). On March 18, 2022, the Court held oral argument on the motion. Although defendants were served on March 10, 2022 with notice of the motion and hearing, they did not appear at the hearing or file any opposition or defense. [See Dkt. Nos. 18, 19, 20]. For the reasons that follow, plaintiff's Motion for a Temporary Restraining Order [Dkt. No. 4] is GRANTED.

I.

Plaintiff GWA is working to develop approximately 812 acres of real property in Prince William County for a data center (the "Digital Gateway Project"). As part of this project, GWA has entered into purchase and sale agreements with over a dozen different sellers, including defendants Pageland LLC, and defendant Barbara Brower, both of whom are represented in all relevant dealings by defendant Jon Sanders Brower, who is the sole member of Pageland LLC and has power of attorney for Barbara Brower.

As conditions of the purchase and sale agreements, GWA must obtain rezoning approval for the Digital Gateway Project from Prince William County. Accordingly, GWA ensured that every purchase and sale agreement for the Digital Gateway Project expressly and unambiguously required each landowner to actively and fully cooperate in pursuing rezoning approval, which explicitly includes signing any documents required to obtain such approval. The Purchase and Sale Agreements executed by defendants expressly and clearly require them “to actively and fully support and cooperate with [GWA], . . . including promptly signing such documents as may be required in connection with obtaining such approval [of the Data Center Rezoning].” [Dkt. 3 at Exs. A & B (Section 7.2 of the Purchase and Sale Agreement, having an Effective Date of October 28, 2021 with Pageland, attached to the Verified Complaint as Exhibit A; Section 7.2 of the Purchase and Sale Agreement, having an Effective Date of October 28, 2021 with Barbara Brower, attached to the Verified Complaint as Exhibit B)]. The Purchase and Sale Agreements further require the Sellers to “... cooperate in good faith to obtain, and diligently pursue, the above approvals for ... the Data Center Rezoning.” [See *id.*, § 7.3]. Despite these requirements, defendants have refused and continue to refuse to sign rezoning forms GWA provided that are necessary to obtain approval for the Digital Gateway Project. As a result, the Prince William County Planning and Zoning Department flagged the Digital Gateway Project’s rezoning application and the application is unable to be processed. [Dkt. No. 3] at ¶ 20-26. Defendants’ refusal to honor their agreement has jeopardized the success of the application; impacted the likelihood of all the other sales in the Digital Gateway Project; and may impact other covenants under defendants’ Purchase and Sale Agreements, the timing of which depends upon the timely filing of the rezoning application. *Id.* at ¶ 27-28.

II.

To prevail on a motion for injunctive relief, a plaintiff must show “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

**A. Likelihood of Success on the Merits**

The Court finds that GWA is likely to succeed on the merits. Defendants entered into valid and enforceable Purchase and Sale Agreements that require them “to actively and fully support and cooperate with [GWA], using commercially reasonable, diligent and good faith efforts, in pursuing and obtaining the approval of the Data Center Rezoning, including promptly signing such documents as may be required in connection with obtaining such approval [of the Data Center Rezoning].” [Dkt. 3, Exs. A & B]. GWA presented defendants with the rezoning applications, but defendants refused to sign them. [Dkts. 3, 4]. As recently as March 7, 2022, defendants were provided a final opportunity to execute the rezoning forms required by Section 7.2 and failed to do so. [Dkt. 4]. As of the March 18, 2022 hearing on this Motion, defendants still had not, and continued to refuse to, sign the rezoning applications. No defense or contractual defect is plainly visible, and “when a contract has been made, and either party refuses to perform the agreement, equity enforces the performance of the contract specifically, by compelling the refractory party to fulfill his engagement according to its terms.” Griffin v. Griffin, 753 S.E.2d 574, 582 (Va. App. 2014).

Further, the Purchase and Sale Agreements signed by defendants explicitly provide for the remedy of specific performance. Section 17.2 (“Seller’s Default”) provides that “Purchaser may pursue the remedy of specific performance against Seller,” for defaults which include failure to fulfill obligations provided for in the agreement. “When the contract sought to be

enforced ... has been proven by competent and satisfactory evidence, and there is nothing to indicate that its enforcement would be inequitable to a defendant, but will work injury and damage to the other party if it should be refused, . . . relief will be granted by specific enforcement.” Chattin v. Chattin, 427 S.E.2d 347, 350 (1993) (quoting Haythe v. May, 288 S.E.2d 487, 488 (1982)). See also Stolz v. Fed. Commc’ns Comm’n, 882 F.3d 234, 240 (D.C. Cir. 2018) (“[T]he court ... ordered Stolz to sign the application with the FCC as his agreement with Entercom required.”). Accordingly, the Court finds that GWA is likely to prevail on the merits of its claims for specific performance.

**B. Irreparable Harm in the Absence of an Injunction**

GWA also shows that it is likely to suffer irreparable harm without the requested injunctive relief. Every day that defendants refuse to execute the required rezoning forms, the rezoning application remains in a state of limbo and increasing jeopardy. [Dkt. 4]. Other covenants in all of the Digital Gateway Project site purchase and sale agreements are dependent upon the timely filing of the rezoning application. Defendants’ refusals to sign the rezoning applications risk the termination of other Digital Gateway Project site purchase and sale agreements. [Dkt. 4]. The delays in processing GWA’s rezoning applications, the increase in likelihood of breaches of other covenants, and the increase in the possibility that the Digital Gateway Project will not be approved are all potential irreparable harms caused by the delay. This Circuit has recognized irreparable harm making injunctive relief appropriate in similar situations. See Mountain Valley Pipeline, LLC v. Easements to Construct, Operate, & Maintain a Nat. Gas Pipeline Over Tracts of Land in Giles Cty., Craig Cty., Montgomery Cty., Roanoke Cty., Franklin Cty., & Pittsylvania Cty., Virginia, No. 7:17-CV-00492, 2018 WL 648376, at \*16 (W.D. Va. Jan. 31, 2018), objections sustained in part and overruled in part, No. 7:17-CV-00492,

2018 WL 1193021 (W.D. Va. Mar. 7, 2018), and aff'd sub nom. Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell, 915 F.3d 197 (4th Cir. 2019).

**C. Balance of Equities**

The Court also finds the balance of equities favors GWA. Although defendants received notice of the hearing on plaintiff's motion, defendants did not appear and have not presented any evidence or defense. While plaintiff has demonstrated the likelihood of harm it faces, it is difficult to conceive of any harm that defendants may suffer if they are required to comply with the terms of the Purchase and Sale Agreements that they have executed and which require in Section 7.2 that they sign the rezoning forms. There is no evidence in this record that defendants have not received fair compensation for agreeing to the Purchase and Sale Agreements or that they will suffer any harm by being ordered to sign the rezoning forms. Accordingly, the balance of equities also tips in plaintiff's favor.

**D. Public Interest**

Finally, there is a strong public policy interest in enforcing valid contracts. Accordingly, the Purchase and Sale Agreements should be enforced.

**III.**

For all these reasons, plaintiff's Motion for Temporary Restraining Order is GRANTED and it is hereby ORDERED, ADJUDGED, and DECREED THAT:

1. Conditioned upon the submission by plaintiff of a \$10,000 (ten thousand dollar) cash or acceptable surety bond with the Clerk of the Court, defendants comply with all terms in the Purchase and Sale Agreements, including signing all required rezoning forms within two (2) business days following the service of this Temporary Restraining Order; and

2. Defendants promptly meet and confer by telephone or in-person with GWA to determine what, if any, of the pleadings and documents filed in this civil action should remain under seal; and


3. This Temporary Restraining Order may be served upon the defendants via private means, including without limitation overnight mail service with proof of delivery, email with acknowledgment of receipt by defendants, or private process server. At plaintiff's election, service may also be via public means, including without limitation the U.S. Marshals Service.

This Temporary Restraining Order expires on Friday, April 1, 2022, when a hearing to address a more permanent preliminary injunction will be heard at 10:00 am. Unless the parties have resolved their dispute, defendants must appear in person at that hearing and may face sanctions for contempt of court if they fail to appear.<sup>1</sup>

The Clerk is directed to forward copies of this Order to counsel of record, who must promptly arrange for its service on defendants.

Entered this 23<sup>rd</sup> day of March, 2022.

Alexandria, Virginia

  
\_\_\_\_\_  
Leonie M. Brinkema  
United States District Judge

---

<sup>1</sup> Although defendants Jon Sanders Brower and Barbara Brower may represent themselves, defendant Pageland LLC, as an artificial entity, may not appear pro se and must obtain counsel admitted to practice in this court to represent its interests in these proceedings. Dugan v. Schamens, 833 F. App'x 981, 983 (4th Cir. 2020) (“It has been the law for the better part of two centuries ... that a corporation may appear in the federal courts only through licensed counsel. As the courts have recognized, the rationale for that rule applies equally to all artificial entities.”).