

EDVA Judge Grants Preliminary Injunction Requiring Property Seller to Execute Rezoning Proffer

Virginia Rocket Docket Blog

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As we posted [here](#) and [here](#), a defining aspect of practice in the EDVA's rocket docket is the ability to quickly obtain preliminary relief. A recent decision by Judge Leonie Brinkema again illustrates how swiftly the court can move. *GW Acquisition Co., LLC v. Pageland Limited Liability Co.*, Case No. 1:23-cv-1207, 2023 U.S. Dist. LEXIS 181048 (Oct. 6, 2023).

GW Acquisition involves the ongoing efforts of a developer, GW Acquisition, to force a property seller, Pageland, to comply with its obligations under a purchase and sale agreement for several parcels that are part of a large data center development project in Prince William County. In fact, Judge Brinkema's October 6 decision was the second time that she granted preliminary relief to GW Acquisition to force Pageland to execute documents in connection with the property sale. *GW Acquisition Co., LLC v. Pageland L.L.C.*, Case No. 1:22CV255-LMB-JFA (E.D.Va. March 23, 2022) (granting a temporary restraining order (TRO)).

The current dispute involved Pageland and another defendant's refusals to sign proffers necessary to obtain rezoning of the property for the development. GW Acquisition filed its complaint and request for TRO and preliminary injunction on September 8, the court held a hearing on the motions 17 days later on September 25, and issued its ruling on October 6, just four weeks after suit was filed.

Likelihood of Success on the Merits

The recalcitrant defendants did not dispute that the proffers at issue were appropriate under the sales agreement. Instead, they claimed that they terminated their agreements because a rezoning application had not been scheduled within the time frame set in the agreement. The defendants' argument was based on a reading of the bylaws, standard practices and scheduling decisions of the local Board of Supervisors that Judge Brinkema characterized as "strained" and "unsupported by any authority." The court also rejected the defendants' reliance on the 30-day notice and cure provisions in the purchase agreement, holding that the defendants' repudiation of the contract excused GW Acquisition's compliance with that provision.

Irreparable Harm

The key to success in any request for preliminary relief is establishing irreparable harm from the denial of an injunction. GW Acquisition easily met that burden because there was a fast-approaching deadline under the

contract to obtain rezoning, and the defendants were the only two landowners involved in the project who refused to execute the proffers. Without the defendants' parcels, the project could not go forward, and the purchase and sales agreements for all the other parcels involved in the project would become terminable if rezoning was delayed by even a few weeks. The court also swiftly rejected any claim of irreparable harm to the defendants, as any financial loss they suffered would be the result of their agreement to the sales contract, not their approval of the proffers.

As a result, Judge Brinkema entered a broad [Order](#) requiring the defendants to take all necessary steps to approve the proffers and otherwise fully cooperate in executing all documents required for rezoning.

Takeaway

GW Acquisition involves a straightforward contract claim, but one prosecuted under tight parallel deadlines imposed by the EDVA and the rezoning process. The takeaway for litigants is that they must be prepared to move quickly to seek preliminary relief, especially in the case of a contracting party that can be expected to delay as long as possible in order to gain greater leverage in a transaction.

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