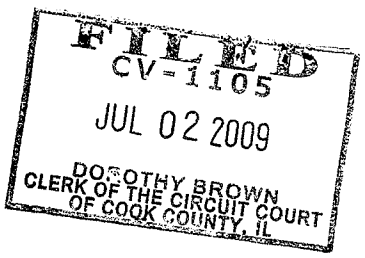
IN THE CIRCUIT COURT OF COOK COUNTY, ILLNIOIS
MUNICIPAL DEPARTMENT- FIRST DISTRICT

CITY OF CHICAGO, a Municipal Corporation,	)	
	)	Case No. 09M1-400573
Plaintiff	)	
vs.	)	Re: 101-111 West Wacker Drive,
	)	226-28 N. Clark Street.
	)	
111 West Wacker Associates, LLC, et al.,	)	
	)	
Defendants.	)	



FINDINGS AND DECISION

This matter comes before the Court upon the Emergency Motion of the City of Chicago (hereinafter "City") seeking a Temporary Restraining Order and a Preliminary Injunction against the Defendants relating to new construction of a high rise situated in the downtown central business district of the City of Chicago. The City seeks to compel the owners of the project to clean and secure the site, register the building as an abandoned property and remove a construction crane which is installed/erected at the site.

The City has filed a Complaint for Equitable and Other Relief citing nine (9) specific allegations of violations of the City of Chicago Building Ordinances (see Complaint) and an Emergency Motion for Entry of Temporary Retraining Order and Preliminary Injunction in this matter. The City alleges "that the conditions at the site constituted an imminent threat of injury to the public health and safety and that the continued presence of the crane at the site is an ongoing threat of injury to the public health and safety." (See City Emergency Motion for Entry of Temporary Restraining Order and Preliminary Injunction).

JURISDICTION

The Court initially finds that it has jurisdiction in this matter based upon the following factors: The subject property is located at 101-111 W. Wacker Drive (aka 226-248 N. Clark Street) within the City of

Chicago, County of Cook, State of Illinois, the allegations in this matter relate to City of Chicago building ordinance violations alleged at the subject property and the parties consist of the City of Chicago as plaintiff and parties situated within the County of Cook.

February 13, 2009

In this matter, at the first hearing date on February 13, 2009, the Defendants, represented by counsel, agreed to comply a number of the allegations of the complaint which are also set forth in the Motion for TRO and Preliminary Injunction. Those items which the Defendants agreed to comply consisted of the following: Clean the premises within ten days, to board and secure all openings which allow for access by or to the public at the ground level and at Lower Wacker Drive, and to remove all standing water in the basement within ten days as well as to install netting at all levels of the site and remove debris. The Court entered Agreed Orders relating to these above referenced matters.

Testimony was then received with cross examination and introduction of exhibits consisting of photos taken by an agent of the City. The City of Chicago presented the testimony of a two witnesses: The first was from Ms. Catherine Harris, the Chief Equipment Inspector for the city of Chicago and the second witness was Mr. Lindsey Anderson, an architect and structural engineer consultant for the City of Chicago.

Ms. Harris testified that she has been the Chief Equipment Inspector for the City of Chicago for five (5) years and inspects all cranes in Chicago. Ms. Harris testified that she has inspected the site and it consists of a planned ninety (90) story building of which twenty five (25) stories have been erected. That construction at the site has stopped since June or July of 2008. She described the site and the fact that a tower crane at the site rises above the twenty fifth (25^{th}) floor which is attached to the 12^{th} floor slab. The crane was being utilized to construct the building and was erected in 2006. It was last used in June of 2008. She testified to her concern regarding the safety of the crane and possibility of collapse. Ms. Harris further testified that there is "not regular, thorough maintenance of the crane" and that there is "no daily inspections conducted."

She described regular maintenance including greasing all aspects of the crane and daily use to determine and identify any problems with the crane. She voiced her concerns if construction were to restart and the crane to be put back into daily use. She stated that fracture testing should be required of the crane due to the

possibility of crane failure and the heavy weight of the counterweight sitting atop the crane structure. She further testified to cracks observed in the 12th floor platform which the crane sits on. That slab was increased from eight (8) inches to twenty (20) inches to support the weight of the crane.

During cross examination she testified that there are currently twenty three (23) cranes in use at that time in the City of Chicago and that the crane contractors conduct the maintenance. She could tell from her inspections if there is a "pin issue". The pins being the bolt like connectors for each section of the crane. She did not have conversation with the crane manufacturer and is not a structural engineer. On redirect Ms. Harris testified that she was previously a crane operator and that in her opinion the crane should be dismantled and reinspected before being reinstalled for future use.

Mr. Lindsey Anderson testified that he had reviewed photos of the site and was concerned about the cracks he observed in the 12th floor pad which supports the entire crane at the site. He described the pad as a "thickened concrete slab" and the site as "an open condition with a cracked slab." Mr. Anderson described the different wind load requirements for a building crane during construction and the different and higher wind load requirements once a crane has been in place for two years. No party has contested the allegation that according to City ordinance, a temporary structure such as the crane becomes a permanent structure for ordinance purposes and is required to withstand a greater wind velocity according to the code. He stated that a "structural analysis had not yet been done" of the situation.

Mr. Anderson also testified that a wire rope cable on a crane such as the one at the subject property "must be maintained or it will fail." He further testified that "It needs to be monitored." During cross examination, Mr. Anderson testified that he had not visited the site and that he did not know if the cracks in the 12th floor pad were structural. Mr. Anderson stated that he "did not have a position that after two years the crane must come down" but there has been "no analysis of the pins." He did make reference in passing to the following, "if critical components could be examined in the air" relating to the possible safety of the crane.

R. Shankar Nair, a structural engineer, PhD, and principal in Teng and Associates testified that he had personally inspected the 12th floor concrete pad and that "the crack was not structural but was shrinkage and was normal."

He further testified that there was "no question that the slab could hold the weight of the crane" and that the design of the slab was the same (if it would be supporting the crane) for "3 months or 50 years."

At the close of testimony from these two witnesses, the Court concluded that the property is an abandoned construction site and that the existing stair, elevator and other openings throughout the twenty five story structure were a dangerous and hazardous condition to anyone who might enter the property including emergency personnel who might have cause to enter the property. Openings for stairs, elevators, etc exist throughout the twenty five floor structure and were uncovered and inadequately protected. This Court ordered that the Defendants install fire resistant plywood around all floor openings to a minimum height of forty two inches throughout the entire construction site and a TRO was entered not to utilize the crane until further order of court.

Based upon the testimony regarding the concrete slab and need for the City structural engineer consultant to conduct a structural analysis, this matter was continued by agreement of the parties for further testimony in this matter until February 26, 2009 with an order of final hearing for March 5, 2009.

February 26, 2009

The hearing was commenced at which time the City informed the Court that a structural engineer's report had been tendered to the City by the Defendants but that further information was required of the crane manufacturer for all parties to complete their analysis. By agreement, the matter was continued with an order for the defendants to secure fencing already in existence along Lower Wacker Drive to an increased height of ten (10) feet to thwart trespassers into the site. The parties agreed that all prior orders had been complied with at the site.

March 5, 2009

By agreement the following orders were entered on this date without further testimony or argument: If construction did not begin within ninety (90) days, the crane shall be removed and if construction begins a specific inspection and repair protocol must be followed including weekly inspections and the defendants agreed to tender specific slab load data to the City that day. The matter was continued until April 2 for status on construction at the site.

April 2, 2009

A City of Chicago inspector testified that there had been substantial compliance at the property as to many of the allegations and that a private security firm had been hired. The attorneys for both parties represented that they were not receiving information from the crane manufacturer which they had requested and as such could not complete their analysis. At that time, the Court allowed the City to Implead with Summons to Issue, Manitowoc, the manufacturer of the crane. The matter was continued for service and jurisdiction upon the crane manufacturer.

April 30, 2009

Both parties informed the court that the crane manufacturer and the parties had been exchanging information and that final analyses regarding the platform and crane relative to wind issues should be completed by May 14, 2009.

May 14, 2009

Mr. Lindsey Anderson, a structural engineering consultant for the City testified that he determined that the crane manufacturer had utilized European wind standards for their analysis of the crane and not the City of Chicago standards set forth in the ordinance. The manufacturer was "refactoring" using the city standards at that time and would forward the completed work to Mr. Anderson. The matter was again continued for completion of the structural analysis relating to the twelfth floor platform and the crane wind speeds.

May 28, 2009

Both parties represented that the crane manufacturer had not tendered the new analysis. A mandatory order was entered versus the crane manufacturer to tender those calculations by June 1, 2009 or the manufacturer was ordered to appear in court.

June 4, 2009

Manitowoc tendered the new data and calculations to both parties and was dismissed form this case by agreement of the parties. By agreement of the parties, the Defense presented a witness relative to the structural analyses conducted in this matter. Mr. R. Shankar Nair testified that he is a structural engineer and the city stipulated that he is qualified as an expert witness. Mr. Nair testified that he a principal of Teng and Associates

and is the designer of the building at the subject property. He has designed skyscrapers throughout the United States and in other countries. He testified extensively as to his experience and to accolades, special honors and professional organizations to which he belongs. He is also licensed in forty four (44) states. His venire was presented to the court which also set forth an extensive publication listing.

Engineering analyses were presented to the court by both the crane manufacturer and by Mr. Nair. Those analyses reach different conclusions.

Mr. Nair testified that the 12th floor slab was increased from eight (8) inches to twenty (20) inches to accommodate the weight of the crane at this site and that more reinforcement steel was added into the 12th floor concrete pad. The tower also sits on two (2) steel beams which are twenty (20) feet long and approximately two (2) feet high. Those beams sit on the pad and redistribute the weight over a greater area. The crane is attached to the beams which in turn are attached to the pad. The crane actually is positioned over the hole in the 12th floor pad. The specifications for the 12th floor pad were created by a different structural engineering firm chosen by the crane company but Mr. Nair agrees with their specifications.

Mr. Nair concluded that the concrete slab should not be compromised by the crane. He then described how the crane is kept in place via collars which prevent the crane tower from moving as a result of wind forces. Mr. Nair then described in detail how the analysis from the crane manufacturer was improperly done in that it based its numbers regarding the allowable wind factors and weight on the 12th floor pad on erroneous factors including: the crane is not attached directly to the 12th floor but to the steel beams and Mr. Nair utilized the ASCE national standards which are more stringent than those mentioned in the City of Chicago ordinance. In fact the City ordinances do not cite or reference the ASCE standards, which are standards developed by the American Society of Civil Engineers (ASCE). Mr. Nair through exhaustive testimony and exhibits represented to the Court that the 12th floor pad was "adequate to support the weight of the crane" and that the crane "met the higher wind standards" of ASCE which would apply to a "permanent structure." As such, Mr. Nair concluded that the crane met with wind standards of the City of Chicago ordinances for permanent structures. There was no cross examination of Mr. Nair. The court then continued this matter for further examination regarding the issue of the safety of the crane itself.

The City called Mr. Anderson again to testify. Mr. Anderson testified that the crane structure was adequate for the wind loads applicable to a permanent structure however he still had concerns regarding the cables supporting the crane. He testified that the cables must be lubricated and if they stay in one position, the cable will deform and that shortens the life of the cable. He further testified "that is a problem."

Ms. Catherine Harris testified again for the City and related that she supervises six inspectors and all tower cranes. She testified to some matters already addressed including that work at the site ceased in July of 2008. She further testified that she inspects this particular crane once per week visually and once per month there is a "better" inspection with a "tech, crane operator and oiler present." She testified that "the turn table is greased and the crane is operated, boom up, boom down and that written records are maintained"

The City then called Mr. Mark Cherry who testified that he is an inspector for tower cranes and is also a crane operator. He testified that he is not the regular inspector of this particular crane. He testified to an inspection during the past week which he attended. He testified that a tech from central Crane was present and two operators and a labor foreman. He testified as to the inspections which were done at the site by all parties, maintenance and operation of the crane by Central Crane employees. On direct, he testified as to his concern that the crane was not being used daily by operators and that once per week only a visual inspection was being conducted.

On cross examination he testified that the inspection he was present at was conducted one time per month and he was unaware of any problems with the crane. He further reiterated on cross and testified that he has concerns about the crane not being used daily and that if something should happen to the crane, no one would know about it until Tuesday when a visual inspection is conducted each week.

In argument, the city agrees that the crane does meet the minimum standards for a permanent structure but their concerns relate to the crane not being used daily which would allow for operators to be present and become aware of issues. Ideally someone would be there daily. The defense admitted by agreement of parties, a copy of a monthly maintenance report and argued that the issue of the cables is addressed by the monthly inspections and the parties are seeking to sell the entire project due a lack of financing at this time.

PRELIMINARY INJUNCTION NOTICE AND HEARING

A preliminary injunction is the primary means of obtaining injunctive relief prior to trial on the merits, which relief is exceptional in its own right. The standards for issuing preliminary injunctions involve a variety of circumstances, but generally the court must be satisfied of the need for such relief and the probability of ultimate success on the merits. Preliminary injunctions require notice (see *People ex rel. Pollution Control Board v. Fry Roofing*, (1972), 4 Ill.App.3d 675, 678-679, 281 N.E.2d 757, 760) and some sort of hearing. The nature of the required hearing depends upon the status of the pleading. A prior evidentiary hearing is required only where questions of material fact exist. (*Schlicksup Drug Co. v. Schlicksup,* (1970), 129 Ill.App. 181, 262 N.E.2d 713.) Furthermore, since defendant is entitled to an opportunity to be heard and since the court must satisfy itself that the standards for issuing such an injunction are met, a hearing of legal arguments is generally required before a preliminary injunction may issue. *See The Paddington Corporation v. Foremost Sales Promotions, Inc. et al.,* 13 Ill. App. 3d 170; 300 N.E.2d 484.

In the case at bar, no argument has been presented to the Court regarding proper notice and in fact adequate evidentiary hearings have been held in this matter as demonstrated by the numerous hearing dates and testimony presented in this matter.

In the Case at bar, the testimony and other evidence presented established the following:

That construction began at this site to erect a ninety story building,

That the crane is this matter was constructed or installed in 2006.

That construction activity at this site was abandoned in 2008.

That presently there are twenty five floors existing at the site which are open.

That the crane remains with a base installed or attached at the 12^{th} floor of the site.

That the crane's uppermost structure is currently situated above the 25^{th} floor of the site.

That the crane is designed to turn in the wind much like a weather vane to reduce wind resistance.

That the crane has been at the site for more than two years which according to existing City ordinance results in it being treated as a permanent structure.

That permanent structures are subject to more stringent wind speed requirements than are temporary construction cranes.

That the crane in place has been found to meet those more stringent requirements, i.e. meeting higher wind pressures for permanent structures.

The remaining issue for purposes of the preliminary injunction relate to the safety of the crane and the possibility of collapse.

PRELIMINARY INJUNCTIONS

"Preliminary injunctive relief "will not be issued unless there is a probability of success on the merits and a need to preserve the status quo in order to prevent irreparable injury for which there is no adequate remedy at law." Amber Automotive, Inc. v. Illinois Bell Tel. Co., 15 Ill. App. 3d 769, 770 (Ill. App. Ct. 1st Dist. 1973) (citing McErlean v. Harvey Area Community Organization, 9 Ill. App. 3d 527, 528 (Ill. App. Ct. 1st Dist. 1972)).

A court will issue a preliminary injunction if the moving party proves he (1) has a clearly ascertainable right which needs protection, (2) he will suffer irreparable injury without protection of the preliminary injunction, (3) he has no adequate remedy at law, and (4) he is likely to succeed on the merits. Madigan Brothers v. Melrose Shopping Center Co. , 130 Ill. App.3d 149, 474 N.E.2d 383 (Ill.App. Ct. 1st Dist 1985). Many courts will also to see if the moving party will suffer greater harm without the injunction than defendant will suffer if it is issued. People ex rel. Hartigan v. Stianos, 131 Ill. App.3d 575, 475 N.E.2d 1024 (Ill. App.Ct. 1st dist. 1985).

The Court finds that the City of Chicago has clearly demonstrated an ascertainable right to protect the life and safety of all Chicago residents and visitors from construction site accidents and activities. Irreparable harm has been demonstrated in that failure of a crane including collapse is a real and possible scenario even where a crane is being operated daily. The Court also finds that the maintenance being conducted is not

sufficient in this instance and that only daily use by trained crane operators affords the needed inspections of tower cranes.

The Court further finds that cable fatigue and possible complete failure as a result of the cable system is a real and present danger. Because the crane is sitting idle each day unused and regularly in a set position as testified to by Mr. Anderson, there is a real and present danger to individuals, vehicles and neighboring buildings from a failing cable and subsequent crane collapse. That said failure or collapse could have catastrophic results including death and major destruction. As such, a real and irreparable injury if the crane fails has been demonstrated. The Court further concludes that a remedy at law is not appropriate in this instance where catastrophic results may occur.

The Court further concludes that even if construction were to begin anew immediately, such reactivity of the tower crane is inadequate. The testimony regarding the crane by the City Chief Equipment Inspector for cranes is unrebutted that the crane should be dismantled, reinspected and reinstalled before construction is restarted at the site. The Court further finds that the testimony of the City witnesses directly raises the issue of possible "pin failure". Mr. Anderson testified unrebutted that there has been no analysis of the pins and Ms. Harris testified that fracture testing should be required. Pin failure in this matter could again be catastrophic. The Court finds that the City has demonstrated a strong likelihood of success on the merits of this case in that they have proven (for purposes of the preliminary injunction) that the crane is not been properly maintained and cannot be utilized at the site without removal and reinspection taking place before construction would start again.

As such, The Court finds that the City of Chicago has met their burden in respect to demonstrating that the crane presents a real and present danger and may result in great bodily harm and/or death and should be removed. The Court concludes that the City is not required to show that the danger is imminent in relation to collapse of the crane but that there is a reasonable potential for such harm as a result of defendant's actions or inactions which would jeopardize lives and/or safety to support an immediate injunction.

Bond

Section 11-103 of the Code of Civil Procedure provides that the court in its discretion, may before entering a restraining order or a preliminary injunction, require the applicant to give bond in such sum, upon such condition and with such security as may be deemed proper by the court, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." 735 ILCS 5/11-103 .

The trial court has the discretion to determine whether to require a bond from the party seeking a preliminary injunction. *Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425, 436, 142 Ill. Dec. 890, 553 N.E.2d 404 (1989). The Court concludes that this action is undertaken to protect the common good and to protect the life and safety of every citizen, visitor and neighboring property owners by the City of Chicago. Furthermore, the Defendants at this time have ceased construction at the site due to a loss of financial backing and are seeking to sell the property which might further delay any chances of restarting this abandoned project. The Court finds that removing the crane may impose financial costs relating to the removal but will not inhibit the refinancing or sale of the project to a new developer. The Court hereby waives a requirement for bond by the City of Chicago.

ORDER

Therefore, IT IS HEREBY ORDERED that a Preliminary Injunction shall issue against the Defendants and the Defendants shall dismantle and remove the crane and all of its components. The Defendants are ordered to take all necessary steps to begin removal of the crane and to complete the dismantling and removal of the crane in a safe and orderly fashion within thirty (30) days.

By: _____

Judge James M. McGing

Judge James M McGing
JUL 0 2 2009
Circuit Court - 1926

Entered: July 2, 2009