

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS**

LANDMARKS ILLINOIS, NATIONAL)
TRUST FOR HISTORIC PRESERVATION,)
ROCK ISLAND PRESERVATION)
SOCIETY, MOLINE PRESERVATION)
SOCIETY, BROADWAY HISTORIC)
DISTRICT ASSOCIATION, and)
FREDERICK SHAW,)

Plaintiffs,)

v.)

ROCK ISLAND COUNTY BOARD, and)
ROCK ISLAND COUNTY PUBLIC)
BUILDING COMMISSION,)

Defendants.)

Case No. 2019 CH 40

**MOTION AND MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Pursuant to 735 ILCS 5/11-101 and 102, Plaintiffs Landmarks Illinois (“Landmarks”), National Trust for Historic Preservation (“National Trust”), Rock Island Preservation Society (“RIPS”), Moline Preservation Society (“MPS”), Broadway Historic District Association (“BHDA”) and Frederick Shaw (“Shaw”) (collectively, “Plaintiffs”) respectfully request that this Court enter an order temporarily restraining and eventually enjoining defendants Rock Island County Board (“Board”) and the Rock Island County Public Building Commission (“PBC”) (together, “Defendants”) from demolishing the 1897 Rock Island County Courthouse (“Historic Courthouse”) or taking any action that would adversely impact its condition, and from using excess proceeds from revenue bonds sold to finance construction of the Justice Center Annex for any purpose other than repaying bondholders.

INTRODUCTION

Plaintiffs file this motion and memorandum because Defendants are proceeding with a plan to demolish the Historic Courthouse, which the State of Illinois has determined to be a culturally and historically significant asset. Defendants are doing so without considering (1) alternative uses for the Historic Courthouse, which could generate jobs and tax revenue; (2) the Rock Island community’s views on the future of the Historic Courthouse; or (3) the Rock Island voters’ opinions on whether the PBC, which the Board created for the sole purpose of building a jail, should be so constrained. Defendants are proceeding with their planned demolition in violation of multiple laws and bond covenants, which require Defendants to consider and address all of the foregoing factors they have ignored. Plaintiffs ask this Court to halt that demolition and preserve the status quo until Defendants meet their statutory obligations and/or produce a lawful source of funding for their demolition project.

As set forth in Plaintiffs’ Complaint, Defendants’ plan to demolish the Historic Courthouse is unlawful. *First*, Defendants intend to demolish the Historic Courthouse in defiance

of the Illinois State Agency Historic Resources Preservation Act (“Preservation Act”), 20 ILCS 3420/1, *et seq.* As the Illinois Department of Natural Resources (“IDNR”) informed Defendants through its cease and desist letter, the demolition may not commence until IDNR and the Illinois Environmental Protection Agency (“IEPA”) complete the consultation, review, and—if necessary—public hearing process that is *required by State law* before the Historic Courthouse may be demolished. That law encourages Defendants, as well as other parties such as national and local interest groups (*i.e.*, the Plaintiffs), to participate in the consultation process, the purpose of which is to find a way to avoid destroying a historic resource. *Second*, Defendants’ plan to demolish the Historic Courthouse violates the Illinois Public Building Commission Act (“PBC Act”), 50 ILCS 20/1, *et seq.* The PBC Act bars the demolition because the project is unrelated to the PBC’s sole authorized purpose of building a jail, has not been approved by a supermajority of the Rock Island City Council, and relies on excess bond funds from another project which the PBC by law must place in a sinking fund. *Third*, the PBC plans to fund its unlawful conduct by misappropriating excess bond proceeds in violation of the covenants of its own offering documents.

The harm Plaintiffs will suffer if the PBC is not enjoined is obvious: Rock Island’s Historic Courthouse will be gone, as will the money the PBC must by law place in a sinking fund. The potential for harm is even more imminent, and the circumstances more exigent, in light of Chief Judge Braud’s January 25, 2019 Administrative Order. Judge Braud issued that order without notice or a hearing and directed Defendants to demolish the Historic Courthouse. Illinois law authorizes groups and individuals like Plaintiffs to file suit to enjoin the destruction of a historic building in a manner contrary to the law. Illinois law also affords Plaintiffs Landmarks and Shaw the right to compel the PBC to perform its obligations under the PBC Act and its

covenants, and to seek to enjoin acts by the PBC in violation of the PBC Act or its covenants. Accordingly, Plaintiffs ask this Court to preserve the status quo by halting and prohibiting any demolition activities until Defendants meet their obligations under the law, or at least until the Court has an opportunity to consider the merits of Plaintiffs' claims.

BACKGROUND

As set forth in detail in their Complaint, after Rock Island voters rejected a proposal to enlarge the PBC's authority beyond that of building a jail, Defendants initiated a plan through which the PBC would construct a new courthouse as an "annex" to the jail. Compl. ¶¶ 63-74. Judge Braud appointed a special prosecutor to test the legality of the end run around Rock Island voters, which he ordered to be filed in Henry County, which is within the 14th Judicial Circuit. Although that lawsuit produced a court order holding that such a project was within the scope of the PBC's purpose, Defendants did not secure the approval of the Rock Island voters—either by a 3/4 majority vote of the Rock Island City Council or through an election referendum. Compl. ¶¶ 63-65, 68-72. Beginning in 2017 and continuing into 2018, Defendants again attempted to expand the scope of the PBC's activities to extend to the demolition of the Historic Courthouse, using excess bond proceeds leftover from the annex project. Compl. ¶¶ 86-92. The covenants in the documents governing the bond offering for the annex project, however, state that the PBC must deposit those excess proceeds in a sinking fund, as required under the PBC Act. *See* Compl. ¶¶ 58, 80-82. As with the annex project, Defendants did not seek approval from the Rock Island City Council or Rock Island voters for their new project, which required the selection of a new site. Compl. ¶ 92.

On December 11, 2018, Defendants submitted an application to the IEPA for a permit to discharge storm water associated with the demolition site, which Defendants must secure before proceeding with any demolition of the Historic Courthouse. As part of that application,

Defendants certified under penalty of perjury that they had submitted the proposal to IDNR to satisfy compliance with Illinois law.¹ Compl. ¶¶ 97-101. The IEPA’s website similarly states that no storm water permits will be effective until a project has received “sign-off” from IDNR that the project complies with historic preservation laws. Compl. ¶ 99.

The same day, IDNR advised the PBC that its proposed demolition would result in an adverse impact on a historic resource, was therefore subject to review under Section 4 of the Preservation Act, and that the PBC should participate in the consultation process between IDNR and IEPA to determine if there is a way to avoid the adverse effect (the demolition). Compl. ¶ 102. IDNR also directed the PBC not to conduct any activities—including asbestos abatement—until the process prescribed by the Preservation Act was complete. *Id.* On December 13, 2018, however, the PBC informed IDNR of its plan to ignore the agency’s directives and proceed with demolition. Compl. ¶ 103. To date, the IEPA has not issued Defendants the storm water permit required to proceed, and the City of Rock Island has properly declined to issue a demolition permit until IEPA and IDNR “sign off” as required by law.

Notwithstanding the absence of the required approvals, on January 25, 2019, Chief Judge Braud issued an Administrative Order directing Defendants to demolish the Historic Courthouse. The Administrative Order purports to make findings of fact and conclusions of law, without notice, without an opportunity to provide input by any parties, without arguments, and without a hearing in which evidence or legal argument were presented, or a hearing of any kind. On February 5, 2019, the PBC’s contractor took steps necessary to proceed with the demolition and,

¹ The application requires Defendants to certify they have submitted the proposal to the Historic Preservation Agency, which the General Assembly folded into IDNR.

upon information and belief, intends to demolish the Historic Courthouse without waiting for the approval required from IDNR and IEPA (and from the City of Rock Island).

On February 6, 2019, Plaintiffs filed their Complaint challenging Defendants' actions on a number of grounds, including those discussed in this motion. Plaintiffs will also file a motion to intervene in the case styled *In re: Rock Island County 1897 Courthouse*, No. 19 CA-6, along with a motion to vacate the Administrative Order Judge Braud entered in that matter on January 25, 2019. Plaintiffs accordingly ask this Court to enjoin the demolition based on the arguments presented in their Complaint and this motion.²

ARGUMENT

A temporary restraining order is a remedy issued to maintain the status quo until a hearing can be held on a motion for a preliminary injunction. *Peoples Gas Light & Coke Co. v. City of Chicago*, 117 Ill. App. 3d 353 (1983). The status quo is the last, actual, peaceable, uncontested status that preceded the pending controversy. *Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425 (1989). "To succeed on a motion for a preliminary injunction, the moving party must plead and prove . . . a clear right or interest in need of protection, irreparable harm if the injunction is not granted, the lack of an adequate remedy at law, and the likelihood of success on

² Plaintiffs filed their Complaint on February 6, 2019 and were informed by the Clerk's office that, if filing a TRO with notice, they must wait until the case is assigned to a Circuit Judge before filing their TRO, setting a hearing date, and notifying Defendants. On February 7, 2019, the Clerk's office informed Plaintiffs that it had assigned the case to Judge Lefstein, who is retiring this month, no longer accepting new cases, and that Plaintiffs' case would be assigned to whomever takes on Judge Lefstein's case load. A representative of the Chief Judge's office then informed Plaintiffs that the case must be transferred to another judicial circuit. Plaintiffs inquired as to the timing and mechanics of reassignment so that their TRO may be heard. The Chief Judge's office informed Plaintiffs that it mailed a letter to the Administrative Office of the Illinois Supreme Court asking for reassignment during the afternoon of February 7, 2019. Accordingly, Plaintiffs file this Motion to preserve their rights, will notify Defendants of its filing, and will inform Defendants that details concerning a date, time, and location for a hearing will be forthcoming. Plaintiffs reserve their right to take action to have their Motion heard in advance of the Supreme Court receiving the Chief Judge's letter (by mail).

the merits.” *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 169 (1st Dist. 2002). Plaintiffs meet each requirement for a temporary restraining order and preliminary injunction.

I. Plaintiffs Have a Recognized Legal Interest in Objecting to the Unlawful Destruction of Buildings of Historic Significance, Such as the Historic Courthouse.

It is settled law that the National Trust, an organization chartered by Congress to facilitate public participation in the preservation of historically significant sites, has a legal interest in pursuing that mission and standing to maintain actions challenging the demolition of historically significant sites, such as the Historic Courthouse. *See Landmarks Pres. Council of Illinois v. City of Chicago*, 125 Ill. 2d 164, 177 (1988) (holding National Trust had standing to challenge City’s failure to comply with procedures for rescinding landmark status in furtherance of demolition). Plaintiffs likewise have a recognized legal interest in ensuring that public property is not destroyed in a manner contrary to the law. *See, e.g., Lombard Historical Comm’n v. Vill. of Lombard*, 366 Ill. App. 3d 715, 718 (2006) (holding private citizens and organizations have standing to challenge demolition of a *public building* where demolition may occur contrary to state law).

Here, all Plaintiffs allege that Defendants are proceeding with the demolition in a manner contrary to the Preservation Act and the PBC Act, both of which are state laws. Moreover, Plaintiffs Landmarks and Shaw contend that Defendants are doing so in violation of their bond covenants, which themselves give bondholders a right to sue to enjoin acts in breach of the covenants and the PBC Act.

II. Demolishing the Historic Courthouse Would Cause Irreparable Harm for Which There Is No Adequate Remedy at Law.

Courts routinely find the existence of irreparable harm where the challenged conduct is demolition. In *Nat’l Tr. for Historic Pres. in U.S. v. F.D.I.C.*, No. CIV. A. 93-0904-HHG, 1993

WL 328134, at *1 (D.D.C. May 7, 1993), the court granted National Trust’s application for a temporary restraining order preventing the F.D.I.C. from “completing the sale and demolition” of a historic building in Texas. The court held that the demolition of the historic building—or the sale of the building to a private agency, which “would remove [the building] from the jurisdictional scope of the [National Historic Preservation Act]”—would cause National Trust “*absolute* irreparable harm,” from which there would be no adequate remedy at law. *Id.* at 3. (emphasis added); see *Forest Pres. Dist. of Cook Cty. v. Mount Greenwood Bank Land Tr.* 219 Ill. App. 3d 524, 529 (1991) (destroying the subject matter of the motion for injunctive relief would cause “irreparable, and indeed, *final*” harm that “could not be remedied at law.”) (emphasis added); *Seay & Thomas, Inc. v. Kerr’s, Inc.*, 58 Ill. App. 2d 391, 402–03, 208 N.E.2d 22, 28 (Ill. App. Ct. 1965) (removing the subject of the motion for injunctive relief results in irreparable harm).

The purpose of Plaintiffs’ suit here is no different. All Plaintiffs are suing to halt demolition, in violation of state law, for the purpose of preserving the Historic Courthouse at least until the statutorily required process is followed, in order to (1) determine if it is possible to avoid the demolition; and, if not, (2) authorize the PBC to actually undertake the demolition. The bondholder Plaintiffs likewise will suffer irreparable harm through the PBC misappropriating funds to conduct the demolition because the PBC has no independent authority to raise revenue to replace those funds—that is one of the many reasons the PBC Act authorizes bondholders to sue to compel performance with the bond covenants and enjoin conduct in violation of those covenants and the law.

III. Although Plaintiffs Do Not Need to Show That They are Reasonably Likely to Succeed on the Merits, Because the Subject of the Injunction is Property that May Be Destroyed, They Have Done So.

As an initial matter, because this case concerns the prospective destruction of property, Plaintiffs need not show a reasonable likelihood of success on the merits. “If the subject of the injunction is property which may be destroyed, or if ... the plaintiff seeks only to maintain the status quo until the ultimate issue is decided, [an] injunction is properly allowed or maintained even where there may be serious doubt as to the ultimate success of the complaint.” *Blue Cross Ass’n v. 666 N. Lake Shore Drive Assocs.*, 100 Ill. App. 3d 647 (1981).³ The status quo is all plaintiffs seek to preserve here.

Under normal circumstances not involving the destruction of property, to show a reasonable likelihood of success on the merits, Plaintiffs need not conclusively prove their entire case. *See Williams & Montgomery v. Stellato*, 195 Ill. App. 3d 544, 551 (1st Dist. 1990). Instead, it is generally enough to raise “a fair question about the existence of [Plaintiffs’] right and that the court should preserve the status quo until the cause can be decided on the merits.” *Stocker Hinge Mfg. Co. v. Darnel Indus., Inc.*, 94 Ill. 2d 535, 541 (1983); *see also Roland Machinery Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 387 (7th Cir. 1984) (“It is enough that the plaintiff’s chances are better than negligible.”).

³ A number of other cases establish the same proposition. *See, e.g., Rhoads v. Vill. of Bolingbrook*, 130 Ill. App. 3d 981, 983–84, 475 N.E.2d 14, 16 (1985); *Gannett Outdoor of Chicago v. Baise*, 163 Ill. App. 3d 717, 723, 516 N.E.2d 915, 919 (1987); *People ex rel. Stony Island Church of Christ v. Mannings*, 156 Ill. App. 3d 356, 361, 509 N.E.2d 572, 575 (1987); *In re Marriage of Joerger*, 221 Ill. App. 3d 400, 407–08, 581 N.E.2d 1219, 1225 (1991); *Save the Prairie Soc’y v. Greene Dev. Grp., Inc.*, 323 Ill. App. 3d 862, 870, 752 N.E.2d 523, 531 (2001).

Here, there is ample evidence that Plaintiffs' rights exists and that their claims are likely to be successful.

First, the PBC's planned demolition is subject to the Preservation Act, and the PBC has states its intent to ignore it. *See* Compl. Ex. 12. The Historic Courthouse constitutes a "historic resource" and its demolition would constitute an "adverse effect" under the statute. *See* Compl. ¶¶ 31-46 (describing statutory scheme). The demolition plan is also a state-permitted undertaking because it necessitates a permit from the IEPA. *See* Compl. ¶¶ 97-100.

Second, as explained in detail in the Complaint, the PBC is not even authorized to undertake the demolition project in the first place because it falls outside the scope of the PBC's authority and because Defendants have not secured the approvals required under the PBC Act. Under Section 4a, a public building commission's authority may only be enlarged by a vote of the majority of electors. 50 ILCS 20/4a. Defendants attempted to secure the voters' approval and failed; the PBC's authority remains confined to building a jail, not destroying a former courthouse that serves no function related to the jail (or the justice system), is not physically connected to the jail, and sits on a different site than the jail. Moreover, even if the demolition project fell within the PBC's narrow purpose, Section 14(a)(2) of the PBC Act states that the PBC cannot demolish the Historic Courthouse without first receiving, among other things, 75% of the votes of the Rock Island City Council or a majority of votes at a general election. *See* Compl. ¶¶ 72, 92, 119. As they did with the annex project, Defendants completely ignored their statutory requirement to seek the voters' approval. One unlawful act should not beget another.

Third, Defendants' reliance on excess bond proceeds from the annex project for their demolition project violates the covenants in the Transaction Documents and Section 15 of the PBC Act, both of which require the PBC to place excess proceeds in a sinking fund. *See* Compl.

¶¶ 58, 80-82, 89. Instead of complying with their covenants and the law, the PBC intends to use those funds for a new project, the demolition, which in any case violates the Preservation Act and the PBC Act.

Accordingly, although such a showing is unnecessary, since this case involves the destruction of property, Plaintiffs should succeed on the merits of all their claims. Defendants are openly defying multiple state laws and their own covenants with the very people who financed the annex construction project. Defendants have instead chosen to steamroll the state-mandated review process set forth in the Preservation Act, ignore the will of Rock Island voters and the PBC Act's restrictions on the PBC's authority, and breach their contractual obligations—jeopardizing the viability of any future bond offering.

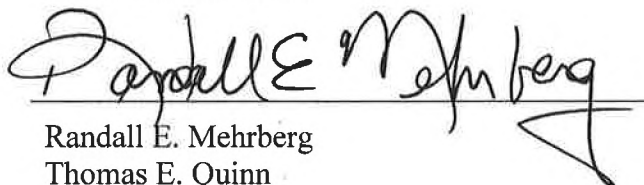
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preserve the status quo and enjoin Defendants from carrying out any demolition activities at Historic Courthouse in violation of State law and their contractual obligations. Plaintiffs further ask that the Court order Defendants not to take any other steps that could adversely impact the condition of the Historic Courthouse. Finally, Plaintiffs Shaw and Landmarks ask that the Court order the PBC to deposit excess proceeds from the sale of bonds to finance the annex project into the sinking fund created for that purpose, as required by the Transaction Documents themselves and Section 15 of the PBC Act.

Dated: February 7, 2019

Respectfully submitted,

LANDMARKS ILLINOIS, NATIONAL
TRUST FOR HISTORIC PRESERVATION,
ROCK ISLAND PRESERVATION
SOCIETY, MOLINE PRESERVATION
SOCIETY, BROADWAY HISTORIC
DISTRICT ASSOCIATION, and
FREDERICK SHAW

A handwritten signature in black ink, reading "Randall E. Mehrberg". The signature is written in a cursive style and is positioned above a horizontal line.

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