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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES E. ORTEGO, <i>et al.</i> ,)	No. C14-1840RSL
Plaintiff,)	
v.)	
LUMMI ISLAND SCENIC ESTATES COMMUNITY CLUB, INC., <i>et al.</i> ,)	ORDER DENYING MOTIONS FOR EQUITABLE RELIEF
Defendant.)	

This matter comes before the Court on plaintiffs’ “Motion for Temporary Restraining Order and Preliminary Injunction to Stop Defendants from Disconnecting Plaintiffs’ Water” (Dkt. # 124) and “Motion for Temporary Restraining Order” (Dkt. # 129). Plaintiffs LaPriel Barnes, Louise Weber, and John Weber assert that defendants misappropriated payments they made for water service and used the resulting delinquencies as a pretext for turning off the water to their homes. Ms. Barnes’ water was shut off on September 19, 2016. The homeowner’s association has agreed that the Webers are not delinquent and has withdrawn the disconnection notice as to their lots. Plaintiffs seek an order enjoining defendants from turning off their water service.

Although the procedure for obtaining a temporary restraining order differs from that which is applicable in the preliminary injunction context, the factors considered by the Court are the same. In order to obtain preliminary injunctive relief, plaintiff must establish “that he is

1 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
2 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
3 public interest.” Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008). “But if a plaintiff
4 can only show that there are serious questions going to the merits – a lesser showing than
5 likelihood of success on the merits – then a preliminary injunction may still issue if the balance
6 of hardships tips *sharply* in the plaintiff’s favor, and the other two Winter factors are satisfied.”
7 Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281, 1291 (9th Cir. 2013) (internal quotation
8 marks omitted).

9 Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the
10 Court finds that preliminary relief is not appropriate. Ms. Barnes has not shown a likelihood of
11 success on the merits. Under the established policies of the homeowner’s association, a failure to
12 pay amounts owed (whether dues, fees, or assessments) for more than sixty days may result in
13 the disconnection of water service from the delinquent lot. Ms. Barnes acknowledges that she
14 owes hundreds of dollars in dues for 2015 and 2016. That delinquency alone justifies the
15 termination of water service, regardless of whether Ms. Barnes separately paid her water
16 assessments. To the extent Ms. Barnes is arguing that the homeowner’s association has no
17 authority to collect dues (or to operate a water service, for that matter) because it ceased to exist
18 more than twenty five years ago, that issue has not yet been resolved. Plaintiffs’ only evidence in
19 support of their contention that “Defendants’ encumbrances on Plaintiffs’ property expired
20 between 1986 and 1990” is a citation to a single clause in the plat documents. Dkt. # 129 at 7-8
21 (citing to Dkt. # 94 at 20). The import and effect of that clause cannot be determined in the
22 abstract, and plaintiffs have not shown that their interpretation is likely to prevail.


23 For purposes of the alternative preliminary injunction analysis, the Court will assume that
24 there are serious questions going to the merits of plaintiffs’ contention that the homeowner’s
25 association ceased to exist years ago. Nevertheless, preliminary relief is not appropriate because
26 the balance of hardships does not tip sharply in Ms. Barnes’ favor, the irreparable harm at issue

1 is wholly avoidable, and the public interest does not support employing the extraordinary
2 remedy of injunction in these circumstances. Plaintiffs filed this lawsuit in 2014 seeking a
3 determination that defendants lack the authority to collect dues or to otherwise operate as a
4 homeowner's association. Rather than await a judicial resolution of the matter, Ms. Barnes
5 unilaterally stopped paying dues in 2015. Despite knowing that her water would be disconnected
6 pursuant to the established policies and procedures of the homeowner's association, Ms. Barnes
7 made no effort to pay the delinquent amounts or to negotiate a payment plan. It is Ms. Barnes
8 who turned a dispute over money – a wholly reparable injury – into a battle over water. Had Ms.
9 Barnes continued paying dues, the risk to her water source would have been avoided entirely and
10 she could seek to recoup the dues as part of her damages in this litigation. The underlying
11 economic loss of having to pay unnecessary charges or fees does not constitute irreparable harm,
12 and equity will not come to the rescue of one who has knowingly and intentionally converted a
13 reparable loss into irreparable harm.

14 With regards to the Webers, they have not shown any harm, much less irreparable harm.
15 Ms. Weber successfully disputed the deficiency notice, and the disconnection notice was
16 withdrawn.

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18 For all of the foregoing reasons, plaintiffs' motions for equitable relief (Dkt. # 124 and
19 Dkt. # 129) are DENIED.

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21 Dated this 11th day of October, 2016.

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23 _____
24 Robert S. Lasnik
25 United States District Judge
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