

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49D05-0211-PL-001897

CARDINAL ENHANCEMENT
CORP.,)
)
Plaintiff,)
)
vs.)
)
CITY OF INDIANAPOLIS-
DEPARTMENT OF
METROPOLITAN
DEVELOPMENT,)
MANSUR REAL ESTATE)
SERVICES, INC., and)
KING PARK AREA)
DEVELOPMENT CORPORATION)
)
Defendants.)

**PLAINTIFF’S PROPOSED FINDING OF FACTS, CONCLUSION OF LAW AND
PROPOSED ORDER FOR PRELIMINARY INJUNCTION AGAINST MANSUR**

Comes now the Plaintiff, Cardinal Enhancement Corp., by counsel and tenders to the Court Plaintiff’s Proposed Findings of Facts, Conclusions of Law and Proposed Order for Preliminary Injunction Against Defendant, Mansur Real Estate Services, Inc. as follows:

Finding of Facts

1. This Matter came before the Court upon Cardinal’s filing of a Verified Complaint for Damages and Injunctive Relief against the Defendants, Mansur Real Estate Services, Inc., City of Indianapolis-Department of Metropolitan Development and King Park Area Development Corporation on November 6, 2002, alleging breach of contract, tortious interference with contractual relations, defamation, preliminary and permanent

injunctive relief. *See Cardinal's Verified Complaint for Damages and Injunctive Relief, filed November 6, 2002 as Cause No. 49D05-0211-PL-001897.*

2. Cardinal's Verified Complaint was accompanied by the filing of an Application for Temporary Restraining Order ("Application") against Mansur seeking to restrain Mansur, its officers, employees and agents from: making false, negative or disparaging statements about Cardinal and its principle officer, Sharon Arnold, to Cardinal's homebuyers, prospective homebuyers and the community; and from making statements to Cardinal's homebuyers for the purpose of inducing them to cancel their contracts with Cardinal to construct homes for them within Fall Creek Place Project. *See Cardinal's Application for Temporary Restraining Order filed on November 6, 2002 as part of its Complaint.*

3. Cardinal's Verified Complaint and Application alleged that Mansur's employees communicated negative, disparaging and defamatory statements about Cardinal and its principal owner, Sharon Arnold, to Cardinal homebuyers and otherwise tortiously interfering with Cardinal's contractual relationship with its buyers in order to induce the buyers to terminate their contracts with Cardinal, including: (a) the removal of Cardinal from the Project for poor performance; (b) Sharon Arnold was a dishonest business person who under-bid the initial contract price in order to get a buyer to sign a contract and who would later demand that the buyer pay more for the home than the original contract price; (c) the buyers were entitled to terminate their contracts by writing a letter requesting to switch builders because Cardinal was not meeting its building schedule; and that, if the buyers didn't switch builders, they would be forced to switch builders by the Project Team.

4. The Court denied Cardinal's Application for Temporary Restraining Order on November 6, 2003, and scheduled Cardinal's request for hearing on Application for Preliminary Injunction on November 14, 2002.

5. The Court entered an order on November 12, 2002, granting Mansur's Motion for Continuance of Hearing on Application for Preliminary Injunction until November 20, 2002.

6. The Court conducted a hearing on November 20, 2002 and two subsequent hearings on December 14, 2002 and February 18, 2003, respectively at which the Court received evidence from the testimony of seventeen witnesses and numerous documents offered by the parties.

7. The petitioning party, Cardinal Enhancement Corp., is an Indiana corporation which entered into a certain Memorandum of Understanding Fall Creek Place Builder Program on September 28, 2001 ("Memorandum") with the Defendants to participate as one of eight Charter Builders to construct homes within the Indianapolis neighborhood known as Fall Creek Place (the "Project"). *Plaintiff's Exhibit A, Memorandum of Understanding.*

8. The City of Indianapolis received a Homeownership Zone Grant from the U.S. Department of Housing and Urban Development to redevelop the Fall Creek Place neighborhood, which is a primary source of funding for the Project. *Plaintiff's Exhibit A, Memorandum of Understanding.*

9. The City of Indianapolis entered into a tri-party agreement with Mansur Real Estate Services, Inc. ("Mansur") and King Park Area Development Corporation ("KPADC") to lead the development of Fall Creek Place (collectively, the "Project

Team”). Under the tri-party agreement, Mansur served in the role of “Master Developer” for the Project, and KPADC served in the role as Co-Sponsor and General Manager of Fall Creek Model Village, L.P., an entity formed for the purpose of financing and holding title to the Model Homes constructed by each of the Charter Builders within the Model Home. *Plaintiff’s Exhibit A, Memorandum of Understanding.*

10. Phase 1 of the Project included a total of 124 total home sites upon which the Charter Builders were to construct new homes for qualified homebuyers. *Plaintiff’s Exhibit B, Status Report, Feb. 2003, p. 2, para. 1.*

11. Originally, the Project Team projected that Phase 1 would be completed by Fall, 2003 based upon sales projections; however, demand for lots within the Project was much greater than originally anticipated so that contracts were in place for all 124 home sites homes by February, 2002, putting the Project a full eighteen (18) months ahead of schedule. *Plaintiff’s Exhibit B, Status Report, Feb. 2003, p. 2, para. 1.*

12. The original eight Charter Builders included: Cardinal, Creative Housing, LLC, QDB Enterprises, Minkis Homes, Ivy Homes, RussBow Builders, Davis Homes, LLC and True Custom Design, LLC. *Plaintiff’s Exhibit A, Memorandum of Understanding, Article I.A., p.2.*

13. The Memorandum imposed a number of rules on the conduct of the Charter Builders within the Project; however, there was evidence presented that those rules were not always applied uniformly or enforced fairly by the Project Team.

14. The Memorandum provided exclusivity to the eight (8) original Charter Builders for Phase 1A of the Project, but reserved the right to seek additional builders for Phase 1B of the Project if the Project Team determined that a Charter Builder was not

fulfilling the requirements of the Project, or if a Charter Builder voluntarily exited the Project. *Plaintiff's Exhibit A, Memorandum of Understanding, Article I.B, p. 2.*

15. The Memorandum provided that a Charter Builder lacking financial capacity to purchase its home sites and follow through on construction in a timely manner may be dismissed from the Project. *Plaintiff's Exhibit A, Article VIII.B, p. 11.*

16. During the early part of the Project one of the original Charter Builders, Ivy Homes, signed three (3) contracts during Phase 1A and then went out of business; another builder, Vintage Homes, which was comprised of former owner/employees of Ivy Homes, was admitted as a Charter Builder and permitted to accept assignment of Ivy's Phase 1A homes with no apparent concern from Mansur or other members of the Project Team for the builder's financial capacity. *Transcript of Hearing, Feb. 18, 2003, Testimony of Christopher Palladino, p. 280 and Testimony of Jennifer Green, pp 216-17.*

17. Charter Builders were required to purchase a minimum number of home sites based upon their Group designation; however, the builders could build as many or as few homes as they chose as long as the minimum home site purchase requirement was met. *Plaintiff's Exhibit A, Memorandum of Understanding, Article V.F., p. 8 and Mansur's Answer to Cardinal's Complaint, para. 15, p. 3.*

18. The Memorandum required each builder to "complete Reservation Form and submit to Master Developer to commence closing process", and "commence construction within thirty (30) days of taking possession on either a pre-sale home or a speculative home." *Plaintiff's Exhibit A, Memorandum of Understanding, Article V.A., p. 7.*

19. The reservation of lots by Charter Builders was handled on a first-come, first-serve basis, where the Charter Builders were allowed to reserve a lot upon furnishing a copy of the contract with the homebuyer to the Welcome Center staff. *Transcript of Hearing, Feb. 18, 2003, Testimony of Christopher Palladino, p. 241, lines 12-24.*

20. The Reservation Form furnished by the Welcome Center provided that a Charter Builder had thirty (30) days to close on any reserved lot or lose the right to acquire the lot, unless the Master Developer at its discretion extended the reservation period for an additional thirty (30) days. *Exhibit R, Fall Creek Place Reservation Agreement, 2353 N. Talbott, Lot Number 19, January 22, 2002.*

21. As a Charter Builder, Cardinal originally submitted lot reservation forms for thirty-five (35) home sites on behalf of homebuyers who selected Cardinal as their builder to Mansur, and Cardinal entered into construction contracts with each of these homebuyers. *Plaintiff's Exhibit A, Memorandum of Understanding, Attachment B.*

22. Neither the 30-day rule for holding lot reservations or the 30-day rule for commencing construction once a builder took possession of a lot was strictly enforced by the Project Team because the infrastructure improvements, such as streets, sewers and curbs, were not completed, and because the Project Team had not anticipated an early sell-out of the lots and the builders were not able to start construction on all their homes at once.

23. The Court learned that a sales agent for Davis Homes signed contracts with approximately 15 to 20 homebuyers and accepted down payments from them for lots in Fall Creek Place Project, knowing that the first Phase of the Project was already sold out in violation of the Memorandum, but the Project Team did not deem this

unethical conduct to be a “cause for dismissal” under the Memorandum since the unsuspecting homebuyers had reportedly been refunded their money by Davis Homes.

Transcript of Hearing, Feb. 18, 2003, p. 147 and p. 199.

24. In its role as Master Developer, Mansur employees staffed the Welcome Center for the Project and distributed a list of Charter Builders to prospective homebuyers; however, Mansur employees were not to recommend any Charter Builder over another. *See Mansur’s Answer to Cardinal’s Complaint, para. 16, p. 3 and Transcript of Hearing, Feb. 18, 2003, Testimony of Prudence Bridgwaters, p. 123, line 2 through 10.*

25. The principle point of contact for homebuyers and builders at the Welcome Center was Prudence Bridgwaters, Sales Associate for Mansur.

26. Cardinal’s Arnold and Mansur’s Bridgwaters developed a very friendly relationship early in the Project, but a rift developed between them in May, 2002 as set forth more fully below.

27. Prior to the rift between Bridgwaters and Arnold, Bridgwaters had asked Arnold to construct a home she was building within the Project on a corner lot on Talbott Street, the most popular street within the Project according to Bridgwaters; after the rift, Bridgwaters decided to have Bridgwaters Enterprises construct her home and not one of the Charter Builders, although all other homebuyers within the Project were required to use one of the Charter Builders. *Transcript of Hearing, Feb. 18, 2003, p. 141, 154.*

28. Also prior to her rift with Arnold, Bridgwaters encouraged several homebuyers to select Cardinal as their builder against the Project Team’s rule that the Welcome Center staff was not to encourage or discourage a homebuyer from selecting a

builder: Bridgwaters steered Mary McClendon to choose between one of two female builders, Cardinal and QDB Enterprises, *Transcript of Hearing, Dec. 12, 2002, Testimony of Mary McClendon, pp. 9-10*; Bridgwaters told Chris Stines that Cardinal was the only builder with an unlimited line of credit with its bank, which Cardinal denied having, *Transcript of Hearing, Dec. 12, 2002, Testimony of Chris Stines, p. 54*; and Bridgwaters aided Angel Morales in his selection of Cardinal as his builder by explaining how to use Cardinal's building standards as a benchmark to compare to other builders, *Transcript of Hearing, Feb. 18, 2003, Testimony of Angel Morales, pp. 81-82*.

29. The Memorandum required each Charter Builder to construct a Model Home on Pennsylvania Street to be funded by a limited partnership comprised of King Park Area Development Corporation as general partner, and National City Bank and Key Bank as limited partners (the "Partnership"). See *Plaintiff's Exhibit A, Memorandum of Understanding, Article II, p. 2*.

30. The Memorandum of Understanding provided each of the Charter Builder's a lease on their Model Homes from the Partnership for a period of thirty-six (36) months for a fee of one dollar per year and imposed certain Model Home operation duties on the Charter Builders. *Plaintiff's Exhibit A, Memorandum of Understanding, Article III.A, p. 4*.

31. The Memorandum of Understanding required each Charter Builder to construct a Spec Home for the Parade of Homes event to be fully completed by May 15, 2002. *Plaintiff's Exhibit A, Memorandum of Understanding, Article IV, p. 6*.

32. The Memorandum identified "Causes for Removal" as follows: (a) If a builder is unable to complete the Project as defined in this Agreement, or is consistently

missing deadlines or not fulfilling their obligations to potential homebuyers, the Project Team has the right to remove the Builder from participating in the Project; (b) Acting in an unethical or illegal behavior will also constitute removal from the Project; and (c) Builders who also misrepresent the Project or Project Team, or fail to comply with the Charter Builders Agreement or Design Guidelines will also be removed from participating in the Project. *Plaintiff's Exhibit A, Memorandum of Understanding, Article I.D., p. 2.*

33. Cardinal constructed a Model Home at 2519 N. Pennsylvania and entered into a lease with the Partnership per the Memorandum. *Transcript of Hearing, Nov. 20, 2002, p. 47, line 25 and p. 48, lines 1 to 18, and Mansur's Answer to Cardinal's Complaint, para. 40, p. 5.*

34. Cardinal constructed and completed a Spec Home at 2443 Talbott Street per the Memorandum in time for the Parade of Homes Event the first weekend in June, 2001, but the parties disputed whether the home was completed by the May 15 deadline.

35. Prior to the May 15 deadline for construction of the Spec Home, a dispute erupted between Bridgwaters and Arnold concerning the submission of certain proposed designs for several of its homebuyers to the Design Review Committee: Arnold contended that Bridgwaters obtained the disputed design plans from Daryl Walton, a draftsman contracted by Cardinal, without her permission or an opportunity to review the plans; Bridgwaters insisted that she obtained the design plans from Walton only after obtaining Arnold's permission. *Transcript of Hearing, Nov. 20, 2002, pp 75-81 and Transcript of Hearing, Feb. 18, 2002, pp. 157-158.*

36. On May 13, 2002, Mansur's Chris Palladino sent an e-mail communication on behalf of the Design Review Committee to Sharon Arnold rejecting proposed design plans for several of Cardinal's homebuyers, Kathleen Kelly, April Denny and Mike Walsh, noting a number of deficiencies with the proposed design plans prepared by Walton, Cardinal's draftsman. *Plaintiff's Exhibit CC*.

37. Arnold sent a reply e-mail message to Palladino the same day his e-mail communication was received alleging that Bridgwaters had obtained the design plans from Walton without her permission. *Plaintiff's Exhibit CC*.

38. Bridgwaters sent a reply e-mail on May 14, 2002, to Arnold claiming she had Arnold's permission before obtaining the design plans, and she further accused Arnold of "stabbing me in the back", and that "Mansur directed me to not waste anymore of my time trying to assist you." Bridgwaters continued, "I have always considered you all to be my friends. But I see now that friendship is only for one party's benefit at the sacrifice of the other." *See Plaintiff's Exhibit CC*. In a letter e-mail that same day, Bridgwaters told Arnold that Chris Palladino "was so delighted at what was said and happy that no one can help you all." *See Plaintiff's Exhibit EE*.

39. Bridgwaters testified that her friendship with Arnold had not changed until after Cardinal had allegedly failed to meet the Parade of Homes May 15 deadline, but her e-mails communicating her displeasure with Arnold clearly took place prior to the May 15 deadline. *See Transcript of Hearing, Feb. 18, 2003, Testimony of Prudence Bridgwaters, p. 130*.

40. The Project Team assigned three persons to inspect each of the Charter Builder's Spec Homes to evaluate compliance with the May 15 deadline, which included

Mansur's Chris Palladino, the City's Project Manager, Jennifer Green, and Sean Murray, another employee of the City.

41. The inspection team conducted a walk-through of each of the Spec Homes one week prior to the deadline to determine the progress that was being made by the builders and instructed builders to notify the Project Team in advance of any exception items they anticipated having when the final inspection was made. *Transcript of Hearing, Feb. 18, 2003, pp. 194-195, 224-225.*

42. On May 9, 2002, Arnold sent an e-mail to Palladino with a copy to Jennifer Green and Sean Murray setting forth in advance of the May 15 deadline a number of exception items she anticipated. *Plaintiff's Exhibit J.*

43. Arnold testified that she experienced delays beyond her control in constructing the Spec Home, including an unusually wet spring, denial of access to the site by Mansur so that infrastructure improvements could be done on the streets, sewers and curbs, problems with a plumber, and lack of financing until March, 2002, leaving her only 61 days to complete the Spec Home.

44. Arnold testified that her lender, James Shockey of Bank One, had been instructed by Mansur's Palladino to hold up approval of her financing until after other builders had been approved. *Transcript of Hearing, Nov. 20, 2002, pp. 52-53.*

45. Shockey testified that Palladino did not ask him to delay Cardinal's funding, but he acknowledged that he handled financing for six of the eight Charter Builders, that he was aware of the May 15 deadline, that he knew Arnold was pressured on time to complete the home and agreed that her financing was not approved by him

until some time in March, 2002. *See Transcript of Hearing, December 12, 2002, Testimony of James Shockey, pp 116-120.*

46. The inspection team inspected Cardinal's and the other builder's Spec Homes on May 16, 2002, and determined that Cardinal had failed to complete its Spec Home; consequently, Mansur's Chris Palladino notified Cardinal by a letter dated May 20, 2002, that it was being removed from the Project; however, Palladino assured Cardinal that the decision "does not impact your existing Phase 1 contracts, provided you are able to meet the schedule agreed upon by all parties." *Plaintiff's Exhibit K.*

47. Palladino's May 20 letter listed a number of exceptions observed by the inspection team, but urged Arnold to still include Cardinal's Spec Home in the Parade of Homes tour the first weekend in June. *Plaintiff's Exhibit K.*

48. Palladino's May 20 letter assured Arnold that she would not "be forced to vacate [her] model home in the near future if [she] would like to continue utilizing this to meet with your Phase 1 clients. *See Plaintiff's Exhibit K.*

49. Palladino's letter identified Cardinal's alleged failure to meet the May 15 deadline as the sole cause for removing it from future phases of the Project.

50. Despite Palladino's assurance to Arnold concerning her Model Home, she was notified by a letter signed by Palladino and Green on October 10, 2002 that she would be required to vacate her Model Home no later than November 8, 2002. *Plaintiff's Exhibit H.*

51. On October 30, 2002, Palladino sent a follow-up e-mail to Arnold extending the lease on her Model Home until February 28, 2003. *Plaintiff's Exhibit I.*

52. According to Cardinal's Verified Complaint and Arnold's testimony, Cardinal's work on its Phase 1 homes is ongoing, the operation of the Model Home was vital to its ongoing work and the loss of it would impede her ability to complete her Phase 1 work. *Transcript of Hearing, Nov. 20, 2002, p. 66-67.*

53. Arnold disputed the exception items listed in Palladino's dismissal letter and appealed to Maury Plambec, Director of Metropolitan Development, to overturn the decision, who denied her appeal more than two months later. *Plaintiff's Exhibit O, Plambec letter to Cardinal dated July 25, 2002.*

54. In addition to the testimony of Sharon Arnold, Cardinal's claim that its Spec Home was "completed" by the May 15 deadline was bolstered by the testimony of Barry Beldin, the Spec Home's buyer, who testified that he sent an e-mail to Maury Plambec complaining about Cardinal's removal from the Project in which he stated: "The reason purportedly given was that Cardinal did not get the home substantially complete on time. This is not true. Notwithstanding the heavy rains the last several weeks before the show and delays some of which I am no so certain Mansur did not create themselves, I personally saw that the home was 'substantially' complete by the inspection deadline and was fully complete by Thursday before the Parade of Homes began. As I said, the home received tremendous response for those people who toured the home." *Transcript of Hearing, Nov. 20, 2002, pp. 40-42.*

55. At least two other Charter Builders, RussBow Builders and Davis Homes, had notable exceptions during the inspection, including a plumbing problem which did not permit the water to be turned on without water leaking and missing kitchen appliances at RussBow's Spec Home and unfinished painting at Davis' Spec Home.

56. Neither RussBow Builders or Davis Homes were removed from the Project for failing to complete the construction of their Spec Home by May 15.

57. The reported standard the inspection team used for determining whether a home was complete was if the house was “liveable.” *See Transcript of Hearing, Feb. 18, 2003, Testimony of Jennifer Green, p. 194.*

58. Other builders’ exception items were passed on by the inspection team since they reportedly had advance notice of any “punch list items” from these builders, but Arnold’s e-mail to Palladino a week before the deadline was not deemed by the inspection team as adequate to save her.

59. Cardinal’s Verified Complaint alleged that Mansur’s employees began communicating defamatory statements about Cardinal to its homebuyers and encouraging Cardinal’s homebuyers to terminate their contracts with Cardinal by submitting a letter to the Project Team requesting to switch builders following the receipt of her dismissal letter on May 20, 2002.

60. During a 2-day interval at the end of May, 2002, within ten (10) days after Palladino sent the dismissal letter to Cardinal, five (5) of Cardinal’s homebuyers sent letters to the Project Team announcing their intention to switch builders after speaking to Mansur’s employees, Bridgwaters and Palladino; two more of Cardinal’s homebuyers followed suit during the next forty-five (45) days; and three (3) additional homebuyers sent similar letters to the Project team by the commencement of these proceedings. *See Plaintiff’s Exhibit GG, cover page for withdrawal dates.*

61. The Project Team allowed each of Cardinal’s homebuyers who requested to switch builders to select another builder and re-assign the lot reservation previously

held by Cardinal to a builder chosen by the terminating homebuyer without consulting Cardinal.

62. Contracts with these homebuyers had been duly executed between January and February, 2002, four to five months prior to the date of most of the terminations. *See Plaintiff's Exhibits R-Z.*

63. Only three of the terminating homebuyers testified before the Court; each testified that they executed a contract with another Charter Builders shortly after sending their termination letter, and each testified that it was at least another four to five months before their builder commenced the construction of their homes.

64. There was no evidence offered that either Mansur or the City contacted Cardinal or made any further investigation to determine whether these homebuyers' desire to terminate their contracts with Cardinal and switch to another builder was justified.

65. A failure to meet the Project's building schedule was the primary reason offered by these homebuyers for requesting to switch builders, but there was no evidence of any prior written correspondence from the terminating homebuyers to Cardinal expressing these concerns.

66. The terminating homebuyers each signed contracts with Cardinal for the construction of their homes which were dated and signed, specified the contract price, identified the lot their home was to be built on, identified the model selected by the homebuyer, included a standard items attachment and noted any modifications requested by the homebuyer. *Plaintiff's Exhibits T-Z.*

67. The homebuyer's contracts provided for commencement of work on or before 30 days after closing on the lot, but made no mention of a specific time frame for closing on the lot. *Plaintiff's Exhibit T-Z*.

68. There was evidence that Cardinal had begun performing under the contracts by having one of its draftsmen to meet with each of the homebuyers to discuss specific design plans for their homes, which in turn were submitted to the Design Review Committee for review. *Transcript of Hearing, Feb. 18, 2003, p. 28, p. 49 and p. 169*.

69. In the case of at least one of the homebuyers who terminated, bank documents authorizing the release of construction funds to Cardinal and additional change orders to the original contract had been executed by the homebuyer and Cardinal after the homebuyer had already contacted Bridgwaters at the Welcome Center about switching builders. *Transcript of Hearing, Feb. 18, 2003, pp. 63-67*.

70. There was also evidence that some of the homebuyers required time after signing the contract to sell their homes before obtaining their financing for their homes. *Transcript of Hearing, Feb. 18, 2003, pp. 29 and 51*.

71. Cardinal conceded it had problems with the quality of the drawing prepared by two of its draftsmen, who were subsequently terminated by Cardinal, which contributed to its problems with its homebuyers.

72. There was also evidence that several of Cardinal's homebuyer's experienced significant delays on the part of their lenders through no fault on the part of Cardinal.

73. Following Cardinal's removal from the Project, Bridgwaters communicated negative and disparaging comments to at least two Cardinal homebuyers

during the summers months following Cardinal's termination according to Mary Sims and Mary McClendon in order to get them to switch to another builder, including that Arnold was dishonest to her homebuyers, that she could not build their houses for the stated contract price, that she would make them go back to their bank and ask for more money. *Transcript of Hearing, Nov. 20, 2002, pp. 24-25; Transcript of Hearing, Dec. 14, 2002, p. 14.*

74. Janet French, a former employee for one of the Defendant's, King Park Area Development Corporation, who was responsible for coordinating all lot closings for the Project, testified that Bridgwaters and Elizabeth Ellis, another Mansur employee at the Welcome Center, had communicated to her during the summer following Cardinal's termination their belief that Arnold was not honest to her homebuyers and that she was not a good builder. *Transcript of Hearing, Feb. 18, 2003, p. 285.*

75. French testified that it was her job to get along with all builders within the Project, and that she didn't encourage the negative comments made by Bridgwaters and Ellis; as a consequence, French felt she was being shunned by Bridgwaters and Ellis. *Transcript of Hearing, Feb. 18, 2003, p. 286.*

76. The Court also heard evidence that these defamatory statements were repeated and spread throughout the Indianapolis community during a November 14, 2002, WTHR-TV news story in which a spokesman for the City, Beth White, erroneously stated that Cardinal had been removed from the Project because of numerous design and quality problems with Arnold's homes, which Arnold believed amounted to saying she did "shoddy work." *Transcript of Hearing, Dec. 12, 2002, p. 83, Plaintiff's Exhibit JJ.*

77. There was no evidence presented that Arnold engaged in dishonest business practices with her homebuyers, under-priced her homes or did not build quality homes.

78. There was evidence that many of Cardinal's homebuyers chose Cardinal because of Arnold's reputation for building quality, custom homes at an affordable price.

79. Mansur's employees denied making any negative or defamatory statements about Cardinal or Arnold to homebuyers or other, yet they offered no explanation why Sims, McClendon and French would all lie about the defamatory statements made by Bridgwaters and Ellis.

80. Mary Sims and Mary McClendon also both testified about Bridgwaters' attempts to force them to switch builders.

81. In June, Bridgwaters contacted Sims and offered to let Sims switch to a lot on Talbott Street next to her lot but told her she would have to switch builders; when Sims balked at switching builders, Bridgwaters allowed her to switch lots but Arnold was forced by Palladino to execute an agreement dated June 12, 2002, pledging to comply with both 30-day rules, even though Sims told Palladino she wanted to wait until the fall to start her home so she would have time to accumulate her down payment. *Transcript of Hearing, Nov. 20, 2002, p. 22, Defendant's Exhibit Q.*

82. According to the Project Team's own admission in a letter dated September 15, 2002, enforcement of the 30-day rules was not instituted until October 31, 2002 for lots on Pennsylvania and Talbott Streets and November 30, 2002 for lots on Delaware Street. *Defendant's Exhibit G.*

83. Notwithstanding the Agreement Palladino compelled Arnold to sign with respect to Sim's lot, Palladino did not recall enforcing the 30-day rules on Cardinal prior to the dates set forth in the September 5 letter; however, the Project Meeting minutes for May 16, 2002, clearly stated that Cardinal would now be subject to the 30-day rule with respect to the lot reservation agreements since Cardinal's lot reservation agreements were signed in January and February and asked that Cardinal begin releasing some of its contracts. *Plaintiff's Exhibit D, Item 5, "Recourse"; Transcript of Hearing, Feb. 18, 2003, p. 277.*

84. Following the filing of Cardinal's Verified Complaint, the City's Project Manager has sent letters to Cardinal requiring Cardinal to sell back to the Project at least eight (8) lots it had previously purchased during the October-November, 2002 timeframe because it did not commence construction on them within thirty (30) days. *Defendant's Exhibits TT and UU.*

85. Mansur sought to rebut Cardinal's claim that the 30-day rules were unfairly being applied by providing similar letters that had been sent to several other builders on January 13, 2003, including Davis Homes, QDB Enterprises and RussBow Builders, for the same purpose; however, the letters also demonstrated that these builders had purchased lots back in the March, April and May timeframe five to seven months earlier than Cardinal and still had not started construction on their homes as of January 13, 2003. *Defendant's Exhibits VV-ZZ.*

86. The evidence is clear that several of the builders had trouble meeting the 30-day rules imposed by the Project Team.

87. Mary McClendon testified that she had twice been convinced to switch builders based upon negative communications made to her by Bridgwaters, and that she had been told by Bridgwaters she would be forced to choose between switching builders or leaving the Project. *Transcript of Hearing, Dec. 12, 2002, pp. 20-21.*

88. McClendon expressed her frustration over Bridgwaters' efforts to get her to switch in a letter she faxed to Janet French on November 8, 2002, in which she stated that her prior request to switch builders "was due to the fact that [she] was misled and possibly lied to about Sharon Arnold by a person at the Fall Creek Welcome Center," and that she had been told that Sharon Arnold had done nothing to secure her lot or move forward. *Plaintiff's Exhibit AA.*

89. The evidence indeed showed that Cardinal had taken steps forward on McClendon's lot at 2346 N. Talbott Street, including pulling the necessary permits for work. *Plaintiff's Exhibit II.*

90. Another Cardinal homebuyer, Steve Simpson, testified that he was forced to leave Cardinal because the lot on his home had not been closed by Cardinal prior to October 31, 2002; however, Simpson testified that delays by his lender and his inability to obtain a down payment from his 401(k) administrator prior to the deadline were responsible for the failure and not Cardinal. *Transcript of Hearing, Dec. 12, 2002, p. 39; Plaintiff's Exhibit P.*

91. Cardinal homebuyer, Chris Stines, testified that he experienced significant delays in the construction of his home when excavators discovered sub-surface debris on his lot that was suppose to have been removed from the lot prior to his builder purchasing the lot and required backfill work; the ensuing soil compaction testing

process took several weeks instead of the normal 24-hour turnaround and Project Team members refused to help him and blamed the delays on his builder. *Transcript of Hearing, Dec. 12, 2002, pp. 62-66.*

92. Cardinal also had several disagreements with the Design Review Committee, which was comprised of Palladino, Green, Todd Rottman, an architect contracted by the City and two other city employees.

93. Palladino, Green and Rottman testified that Cardinal was not following the building guidelines established by the Design Review Committee, but their testimony and e-mail communication by them also showed that the guidelines had been changed as the Project progressed so that specific design plans previously approved by the Design Review Committee for Cardinal and other builders were no longer acceptable, resulting in added costs to Cardinal and their homebuyers. *Transcript of Hearing, Feb. 18, 2003, pp. 100-105, pp. 270-275; Plaintiff's Exhibit HH; and Defendant's Exhibit EE.*

94. Cardinal is in the process of trying to fulfill its contractual obligation to construct the balance of its Phase 1 homes as it was assured it would be allowed to do in Palladino's May 20, 2002 letter.

95. Mansur has engaged in a pattern of discouraging Cardinal's homebuyers from maintaining their contractual relationship with Cardinal by making false and defamatory statements about Cardinal and Arnold and by making other false representations to them in order to convince them to switch builders.

96. The communication of defamatory, negative and disparaging statements by Mansur's representatives about Cardinal to its homebuyers, prospective homebuyers

and others in the community has and continues to damage its business reputation and its contractual relationships with its buyers.

97. The communication of statements by Mansur's representatives to its homebuyers for the purpose of inducing them to breach their contracts with Cardinal has caused nine (9) of its homebuyers to cancel their contracts with Cardinal and continues to threaten additional cancellations by homebuyers.

98. There is no evidence that Mansur sought to discover whether Cardinal's homebuyers had justification for terminating their contracts with Cardinal.

99. Cardinal has and continues to suffer irreparable injury, loss and damages in the form of lost business opportunities and profits, destruction of business relationships with its homebuyers and loss of business reputation as a result of defamatory and other communications by Mansur's representatives to Cardinal's homebuyers, prospective buyers and the community. Cardinal's damages are not ascertainable because there is no way to determine how many homebuyers, contractors and suppliers will be dissuaded from patronizing Cardinal.

100. The issuance of a preliminary injunction is unlikely to cause Mansur to incur any damages because the fees Mansur earns from the Project are the same regardless of which Charter Builder builds homes within the Project.

101. To the extent any of the foregoing findings of fact are conclusions of law, they are hereby incorporated as additional conclusions of law.

Conclusions of Law

1. The Court has jurisdiction over the subject matters of this action and the parties.

2. Cardinal's remedies at law for the tortious interference with a contract and defamation before final resolution of the parties' dispute would be inadequate because the continued communication of defamatory statements by Mansur's representatives and other statements intended to induce Cardinal's homebuyers to cancel their contracts with Cardinal would cause irreparable damage to Cardinal in the form of lost business opportunities, lost profits, destruction of business relationships and further damage to its business reputation at a time when Cardinal is facing a very aggressive building schedule it must meet in order to fulfill its obligations to construct its Phase 1 homes in accordance with the Memorandum.

3. Cardinal's damages are not ascertainable because there is no way to determine how many homebuyers, contractors and suppliers will be dissuaded from patronizing Cardinal.

4. Cardinal is reasonably likely to prevail on the merits of the dispute between itself and Mansur concerning whether Mansur has defamed Cardinal and tortiously interfered with certain contracts Cardinal has entered into with its homebuyers in the Project.

5. The injunction sought by Cardinal is necessary to preserve the status quo and avoid harm to any party until the parties' rights and obligations are decided by this Court.

6. The harm to Cardinal, if injunctive relief is not granted, greatly outweighs the harm, if any, to Mansur if injunctive relief is granted.

7. The public interest will be served by the injunction sought by Cardinal.

8. The security contemplated by Indiana Trial Rule 65(C) is hereby waived.

9. To the extent any of the foregoing conclusions of law are findings of fact, the conclusions of law are hereby incorporated as additional findings of fact.

THE COURT NOW ORDERS THAT:

A. Mansur, its officers, employees and agents are hereby ordered to refrain from making false, negative or disparaging statements about Cardinal and Sharon Arnold to its homebuyers, prospective homebuyers and the community.

B. Mansur, its officers, employees and agents are further hereby ordered to refrain from making statements to Cardinal's homebuyers for the purpose of inducing them to cancel their contracts with Cardinal to construct homes within the Fall Creek Place Project.

This preliminary injunction shall remain in effect until the underlying claims are resolved.

IT IS SO ORDERED THIS _____ DAY OF _____, 2002 AT _____ A.M./P.M.

Judge, Marion Superior Court

Respectfully submitted,

Gary R. Welsh (Atty. No. 17607-49)
Attorney for Plaintiff

Gary R. Welsh
Attorney At Law
320 N. Meridian, Suite #816
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the following parties via U.S. mail, first class, postage prepaid this 4th day of March, 2003:

William W. Barrett
Williams Hewitt & Robbins, LLP
600 N. Emerson Avenue
P.O. Box 405
Greenwood, IN 46142

Jeffrey McQuary
Office of Corporation Counsel
City of Indianapolis
200 E. Washington Street, Suite #1601
Indianapolis, IN 46204

Andrew B. Buroker
Krieg DeVault, LLP
One Indiana Square, Suite #2800
Indianapolis, IN 46204

Gary R. Welsh