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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 DEL WEBB COMMUNITIES, INC.)

Case No. 2:08-cv-00571-RCJ-GWF

11 Plaintiff,)

12 vs.)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND PRELIMINARY
INJUNCTION ORDER**

13 CHARLES LESLIE PARTINGTON d/b/a)
M.C. MOJAVE CONSTRUCTION, JOHN)
14 WILSON, individually, and DOE)
INDIVIDUALS I-X, inclusive; and ROE)
15 ENTITIES I-X, inclusive,)

16 Defendants.)

17 Plaintiff's Motion for Preliminary Injunction came on regularly and with notice for
18 hearing before the Court on the 22nd day of September, 2008. Plaintiff was represented by Todd
19 M. Touton, Esq., and Jennifer L. Braster, Esq., of Lionel Sawyer & Collins. Defendants were
20 represented by Jeremiah Pendleton, Esq., of Murchison & Cumming, LLP. Having considered
21 the pleadings and papers presented by the parties and on file herein, and having heard the
22 arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.
23 These findings are made only in support of this preliminary injunction and are based on the
24 Court's determination that plaintiff has demonstrated a probable likelihood of prevailing on the
25 merits on the matters contained herein:
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FINDINGS OF FACT

Parties and Jurisdiction

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3 1. Del Webb Communities, Inc. ("Del Webb") is an Arizona corporation with its
4 principal place of business in Michigan. Del Webb is and has been doing business in Clark
5 County, Nevada, since 1946. Del Webb specializes in the development of master-planned, age-
6 qualified communities.

7
8 2. In 2001, Del Webb merged with Pulte Homes, Inc. ("Pulte"), which has been
9 doing business in Clark County since 1992.

10 3. Del Webb opened Sun City Anthem, located in Clark County, in July 1998. Sun
11 City Anthem is presently nearly sold out, with only a few lots available.

12 4. In addition to Sun City Anthem, Del Webb has five other master-planned, age-
13 qualified communities currently open in Nevada: (1) Sun City Aliante in North Las Vegas; (2)
14 Sun City Mesquite; (3) Solera at Stallion Mountain in Las Vegas; (4) The Villas at Solera in
15 Henderson; and (5) Sierra Canyon in Reno. Del Webb is also offering homes at The Club at
16 Maderia Canyon in Henderson, Nevada, a non-retirement community.

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18 5. Defendant Charles Leslie Partington ("Partington"), a Nevada citizen, d/b/a M.C.
19 Mojave Construction ("Mojave"), was a sole proprietor who operated Mojave in violation of
20 Nevada law by relying upon an expired fictitious name certificate. Partington is not licensed and
21 has never been licensed under NRS Chapter 645D to examine or inspect any structure or
22 component of a structure or to communicate any inspection report based on such an inspection,
23 but holds himself out to the public, including residents of Del Webb communities, as "licensed"
24 for those purposes.

25
26 6. Defendant John Wilson ("Wilson"), also believed to be a Nevada citizen, is a
27 similarly unlicensed employee and/or agent of Mojave who also held himself out as properly

1 licensed to examine or inspect components of structures or structures and/or to communicate
2 inspection reports under NRS 645D.080, and has personally communicated misrepresentations to
3 homeowners of Del Webb properties.

4 7. Del Webb has asserted the following claims for relief in this case: (1) champerty
5 and maintenance; (2) violation of Nevada’s Deceptive Trade Practices Act; (3) violation of
6 Lanham Act and Nevada Deceptive Trade Practices Act; (4) intentional interference with
7 contractual relationships; (5) temporary, preliminary and permanent injunctive relief; and (6)
8 attorneys’ fees as substantive relief under Sandy Valley Associates v. Sky Ranch Estates Owners
9 Association, 117 Nev. 948, 35 P.3d 964 (2001).
10

11 8. A federal question is presented based on violations of the Lanham Act and
12 jurisdiction in this Court is proper.

13 9. There is also complete diversity between Del Webb and defendants and the
14 amount in controversy exceeds \$75,000. Diversity jurisdiction exists pursuant to 28 U.S.C 1332
15 and jurisdiction in this Court is appropriate.
16

17 **Background**

18 10. Del Webb has developed and continues to develop residential communities,
19 including master-planned, age-qualified communities in Nevada, including Clark County.

20 11. At Sun City Anthem, as well as other of its Nevada communities, Del Webb
21 provided and continues to provide various warranty programs to its residents.
22

23 12. Beginning in 2001, Del Webb’s warranty programs provide its residents up to ten-
24 year coverage for certain structural elements, as follows:

25 **Ten Year Coverage--**The Builder warrants the construction of the home
26 will conform to the tolerances set forth in the below Performance Standards for
27 Structural Elements for a period of ten years after the closing date, subject to the
28 limitations set forth below. Structural Elements are footings, bearing walls,
beams, girders, trusses, rafters, bearing columns, lintels, posts, structural
fasteners, subfloors and roof sheathing. A Structural Element will not be

1 deemed defective, and no action will be required of The Builder, unless there is
2 actual physical damage that diminishes the ability of the Structural Element to
perform its load-bearing function such that the home is unsafe.

3 13. The 2001 Del Webb Home Protection Plan also provides for alternative dispute
4 resolution in the event of a dispute with a resident. Matters that cannot be resolved directly
5 between Del Webb and homeowners are first to be submitted to mediation by the Professional
6 Warranty Service Corporation (the "Plan Administrator") and, if the Plan Administrator cannot
7 successfully mediate the dispute, then by binding arbitration conducted by an independent,
8 nationally recognized arbitration organization designated by the Plan Administrator pursuant to
9 the United States Arbitration Act, 9 U.S.C. §1 et seq., and the arbitration organization's rules.

11 14. Although the 2001 Home Protection Plan was not part of prior sales packages,
12 Del Webb has in fact adopted the practice of treating earlier purchasers as if they had the benefit
13 of the 10-year limited warranty.

15 15. Defendants have solicited various homeowners throughout the Sun City Anthem
16 development during the warranty period to accept a "free" home inspections. As part of their
17 inducement, defendants specifically represented to homeowners that they would only collect a
18 fee if or when the "builder" (referring to Del Webb) reimbursed the homeowner as a result of the
19 initiation of a subsequent demand made under NRS Chapter 40. Mojave's agreements with
20 homeowners for free inspections assign the right to recover any and all inspection fees from the
21 builder as might later be recovered pursuant to NRS 40.655 to Mojave.

23 16. Defendants acknowledge that Mojave used written solicitations to Sun City
24 Anthem homeowners, which state in pertinent part:

25 THE NEW 'RIGHT TO REPAIR' LAW IN NEVADA

26
27 Under the new law homeowners have the right to have the builder make the
necessary home repairs to homes that show code violations or work performed
under industry standards. Your options are:

- 28 1) HOMEOWNERS can notify the homebuilder via Certified Mail

1 with return receipt requested, explaining that MCMC [Mojave] has conducted
2 an evaluation and discovered construction defects or manufacturer's
3 specification not being adhered to. Homeowners should be aware of the
4 process outlined in Chapter 40 of the Nevada law if they intend protect [sic]
5 their own rights.

6 2) INSPECTION TEAMS can help the homeowners through the
7 process by representing the interest of the homeowners when the builder and
8 subcontractors do their walk through; make sure the repairs are within code
9 requirements or manufacturers specifications; complete the process by doing a
10 final walk through inspection with the homeowners. The law states that you
11 can be reimbursed for any reasonable expert fees. Be sure that the company
12 you hire offers you a **Risk Free Service Agreement**. These companies look
13 to be paid for their services only if you receive reimbursement from the
14 builder.

15 3) LEGAL FIRMS THAT HANDLE CHAPTER 40 CLAIMS. A
16 law firm can make sure the builder will honor his responsibility and ensure
17 that your legal warranty period is protected and extended. The law firm will
18 also hire their own inspection teams to protect you from shoddy workmanship
19 by subcontractors. Again make sure that the law firm will sign a **RISK FREE**
20 **or CONTINGENCY FEE AGREEMENT**.
21 If you are not familiar with a law firm that handles Chapter 40 claims, we can
22 provide the names of three law firms that are willing to help you.
23 If we can be of any further assistance please contact us at (702) 439-8504.

24 At Your Service
25 *MC Mojave Construction* [Emphasis supplied.]

26 17. Defendants also acknowledge that Mojave's Chapter 40 Inspections and
27 Evaluation Agreement with Sun City Anthem homeowners includes the following
28 representations:

Homeowner agrees:

To include all MCM invoices for services rendered on behalf of homeowner
by MCMC to the homebuilder and/or law firm if builder is represented by
such via certified mail with return receipt request; If homeowner desires
[Mojave] to send copies of said invoices to the builder and/or legal firm via
certified mail please initial here _____

Terms of payment:

MCMC will ONLY collect said fee if or when the builder reimburses the
Homeowner; Homeowner is not responsible to pay the fee until the
Homeowner receives reimbursement from the builder for inspection fees.
However, Homeowner assigns to MCMC the right to recover any and all
inspection fees from the builder if the builder fails to pay all the inspection

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fees as outlined in NRS 60.645.

18. Defendants also acknowledge having caused placards to be placed throughout Sun City Anthem stating:

*** * * Notice to Neighbors * * ***

As a courtesy, we are informing you that, due to a 'Builder' home inspection, you may experience a few hours of extra vehicular traffic in your neighborhood. These vehicles belong to representatives & experts from both MC Mojave Construction & your Builder, his subcontractors and agents. This inspection has been scheduled for

_____ address & date

Once the Builder inspections are concluded, a repair plan and time-frame are provided to the homeowner for their review and approval. The Builder's repairs are also 'free' to ALL homeowners under a Chapter 40 claim, even if you are not the original owner.

**If you have any question or if you want to know
if you qualify for a FREE home evaluation
Please Call (702) 439-8504**

MC Mojave Construction-Lic. #B-0025771

NN604

19. Mojave's reference to its Construction-Lic. #B-0025771 at the bottom of its "Notice to Neighbors" was intended to mislead homeowners into believing Mojave is licensed pursuant to NRS 645D to perform structural inspections.

20. The language of the "Notice to Neighbors" contains misleading representations about the nature and characteristics of Mojave's services and infers that the inspection or "free home evaluation" solicited by Mojave is an inspection by experts from Mojave and "your Builder," meaning Del Webb. Defendants' placard further advertises or promotes Mojave's free inspections as identified with or the same as "the Builder inspection" to be followed by "Builder's repairs . . . even if you are not the original homeowner." Del Webb never conducted any inspections in conjunction with Mojave or authorized Mojave to act as its agent.

21. Other form solicitations produced by defendants demonstrate that defendants

1 referred to a relationship between them and Del Webb. One such form states:

2 After a close inspection by MC Mojave Construction, helping the homeowners,
3 and the Builder's inspection team, certain construction items have been found to
4 be deficient and are now being repaired at no cost to the homeowners.

5 22. Defendants' activities were intended to mislead and actually misled Sun City
6 Anthem homeowners to believe that inspections conducted by defendants were made under a
7 proper structural inspection license and by "representatives & experts from both MC Mojave
8 Construction & [their] builder," when in fact the inspections were conducted by defendants alone
9 and without any authorization from Del Webb.

10 23. Defendants' activities were intended to bring and actually did interrupt and stop
11 all communications between Del Webb and its homeowners as is anticipated by both parties
12 under the home warranties. Defendants' activities were also intended to generate and have
13 generated litigation through class action lawsuits which principally benefit others, chiefly
14 Mojave and the law firms they recommend, including the Angius & Terry law firm.
15

16 24. The inspection reports prepared by Mojave for homeowners is on Mojave
17 letterhead stating at the top:

18 **M C Mojave Construction**

19 Construction Investigations & Consulting Licensed General Contractor : B-0024771
20 5001 Jay Ave. -- Las Vegas, Nevada 89130 -- Inspection Division Phone 702-341-6068

21 25. Defendants produced documents establishing that they wrote Sun City Anthem
22 residents, referring to Mojave's "Inspection Division" and to a general contractor's license,
23 writing as follows:

24 MCMC has prepared this preliminary constructional defect report and repair
25 scope based on our *limited* visual evaluation to the referenced property.

26 This evaluation identifies the areas of concern pertaining to the
27 constructional defects and/or product manufacturers recommendations
28 discrepancies that were documented at this residence on the date of our
evaluation. Our report includes the following; the locations of the infractions,

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defects and/or damages, photos of the occurrences and a brief description of the occurrences. In addition, we've included *Preliminary* repair recommendations.

The building systems that are included in our site evaluation are as follows: Roofing, Stucco and Concrete. Additionally, this report may cover miscellaneous defects, i.e. drywall cracks, water intrusion damage and mold contamination, etc.

THIS REPORT IS BASED UPON OUR LIMITED VISUAL INVESTIGATION AND SHOULD NOT BE CONSTRUED TO BE EXHAUSTIVE NOR DEEMED ABSOLUTE IN REGARD TO POSSIBLE CONSTRUCTION DEFECT(S) IN CONECTION [sic] WITH THIS PROPERTY. THE POSSIBILITY ALWAYS EXISTS FOR HIDDEN DEFECTS WITHOUT THE USE OF INTRUSIVE EVALUATION AND/OR DESTRUCTIVE TESTING.

This report may, however, be used to illustrate certain constructional deficiencies and/or discrepancies that may have been committed during the production of this home. [Emphasis added.]

Defendants provided Sun City Anthem residents with reports pertaining to purported inspections and investigations of "Roofing," "Stucco & Concrete," "Miscellaneous," and "Technical Data."

26. The inspection reports generated by defendants identified items which, if factual, are within the scope of the Del Webb Home Warranty.

27. Although defendants' actions have hindered Del Webb's ability to continue communications with homeowners, in addition to written signs and web advertisements, defendants also verbally misrepresented to Sun City Anthem residents defendants' proper legal status as licensed to perform structural inspections and as authorized to do so either by Del Webb or some government entity. A form letter prepared by defendants for use by Sun City Anthem residents demonstrates that defendants misled residents into believing they were properly licensed to perform structural inspections and provide reports necessary to commence NRS Chapter 40 actions against Del Webb. The form letter states in part:

My home was professionally inspected recently and it was discovered that a number of constructional discrepancies currently exist.

Enclosed, please find a copy of my inspection report. I am hopeful that the enclosed report will enable you to ascertain the extent of the discrepancies listed as I process this claim pursuant to NRS 40.645.

.....

1 I am also including an invoice from MC Mojave Construction reflecting
2 the expense I have incurred for their report and evaluate appropriate corrective
measures.

3 [P]lease contact MC Mojave Construction to schedule any appointments
4 for inspections or repairs on my home.

5 28. Defendants' illegal inspections and structural reports were used by the Angius &
6 Terry law firm, among others, to commence NRS Chapter 40 lawsuits against Del Webb. A
7 letter from Angius & Terry to Del Webb states the reliance on defendants' reports:

8 Pursuant to Nevada Revised Statutes ("NRS") 40.645, you are hereby
9 notified of constructional defects. These defects include, but are not limited to,
10 the issues listed in the attached report prepared by MC Mojave Construction
dated 7/14/07.

11 29. Mojave's misleading solicitations and statements were directed at and made to
12 homeowners within age-qualified communities where most residents are 60 years of age or older
13 and therefore are defined as elderly under Nevada law.

14 30. Defendants have held and threaten to continue to hold themselves out to the
15 public as certified or licensed to inspect residential properties.

16 31. Documents produced by defendants demonstrate that they have also solicited the
17 business of Sun City Anthem residents under the name "Construction Design Specialists,
18 Construction Investigations and Consulting," with general contractor license B-0058810.
19 Defendant Partington is associated with CDS Construction Design Specialists, which lost its
20 contractors' license in 2007.

21 32. Records produced in this case disclose that defendants inspected residences in
22 Sun City Anthem for Chapter 40 cases brought by Angius & Terry, among other law firms.
23 Those records indicate that defendants claim a "Grand Total of Owed Receivables" of \$927,275
24 for 486 inspections performed, the majority of which appear to be located in Del Webb
25 properties.
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27 33. Mojave voluntarily surrendered its B-2 license on or about July 9, 2008, and the
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1 voluntary surrender was processed by the Nevada State Contractors Board on August 21, 2008.

2 34. Defendants' past and threatened activities pose a threat and continued threat of
3 harm to the public through unlicensed inspections and reports and to Del Webb's good will,
4 reputation, and contractual relationship with the residents of its communities.

5
6 **CONCLUSIONS OF LAW**

7 35. Based on the Findings of Fact, the Court concludes that Del Webb is entitled to
8 preliminary injunctive relief.

9 36. Fed.R.Civ.P. 65 authorizes preliminary injunctions. The Ninth Circuit endorses
10 entry of a preliminary injunction under two alternative tests. Under the traditional test, the
11 criteria are (1) a strong likelihood of success on the merits, (2) the possibility of irreparable
12 injury absent an injunction; (3) a balance of hardships favoring the plaintiff; and (4)
13 advancement of the public interest. Selimaj v. City of Henderson, 2008 WL 979045, *3 (D. Nev.
14 2008); White v. Guinn, 2008 WL 763232, *1 (D. Nev. 2008); Paradise Canyon, LLC v. Integra
15 Investments, LLC, 2008 WL 946919, *4 (D. Nev. 2008). The alternative test uses a "sliding
16 scale" or "balancing test" where injunctive relief is available upon demonstration of either: (1) a
17 combination of probable success on the merits and the possibility of irreparable harm; or (2)
18 serious questions are raised and the balance of hardships tips in the movant's favor. Selimaj, id.;
19 White, id. at *2; Paradise, id.

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22 37. Where false and deceptive advertising and solicitation is involved, as has been
23 demonstrated by Del Webb in this case, irreparable injury may be presumed from a showing of
24 likelihood of success on the merits. Paradise Canyon, LLC v. Integra Investments, LLC, 2008
25 WL 946919, *4 (D. Nev. 2008).

26 38. NRS Chapter 645D governs inspectors of structures and appoints the Real Estate
27 Division to oversee their licensing. NRS 645D.080 defines an "inspector" as "a person who
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1 examines any component of a structure and prepares or communicates an inspection report.”
2 NRS 645D.070 defines an “inspection report” as “an analysis, opinion or conclusion regarding
3 the condition of a structure” that is:

- 4 1. Provided after an inspection, in a written report, for or with the
- 5 expectation of receiving compensation for the report; and
- 6 2. Designed to describe and identify the inspected systems or
- 7 structural components of the structure, their physical condition, any material
- 8 defect and any recommendation for evaluation by another person.

8 Defendants have held themselves out to the public as properly licensed to perform inspections of
9 structures and prepare or communicate inspection reports based on those inspections.

10 39. NRS 645D.160 requires a person who “engages in the business of, acts in the
11 capacity of, or advertises or assumes to act as an inspector” to first obtain a license from the Real
12 Estate Division. NAC 645D.090(1) specifies that Chapter 645D is applicable to “any person”
13 who:

- 14 (a) Performs inspections of residential or commercial property; and
- 15 (b) Signs a document regarding the inspection in a way that
- 16 designates the person as a ‘certified inspector.’

17 Defendants have engaged in the business of, acted in the capacity of, and advertised or assumed
18 to act as inspectors of structures without having first obtained a necessary license under NRS
19 Chapter 645D and threaten to continue to do so to the detriment of Del Webb.

20 40. An applicant for such a certificate to perform inspections of structures must
21 comply with NAC 645D.210, which protects the public by requiring an applicant’s proof of
22 requisite education, experience, and ability to produce an appropriate inspection report, as
23 follows:

- 24 (a) proof of successful completion of not less than 40 hours of classroom
- 25 instruction in subjects related to structural inspections in classes approved by the Nevada Real
- 26 Estate Division;
- 27 (b) completion of an examination approved by the Real Estate Division;
- 28

1 (c) proof of observation of at least 25 inspections performed by a certified
2 general inspector or a certified master inspector or by an instructor approved by the Real Estate
3 Division;

4 (d) proof of a high school diploma or its equivalent; and

5 (e) demonstration of ability to produce a complete and credible inspection
6 report according to the standards of NAC 645D.460-.580, inclusive.

7 41. Other sections of Chapter 645D require a licensee's proof of good character and
8 financial responsibility, *i.e.*, payment of an investigation fee (NRS 645D.180(1)); fingerprinting
9 and authorization for a criminal records search (NRS 645D.180(2)); proof of both errors and
10 omissions and general liability coverage each in the amount of at least \$100,000 (NRS
11 645D.190); and proof of payment of any child support obligations (NRS 645D.195).

12 42. NAC 645D.460 establishes standards of professional conduct which specifically
13 prohibit any relationships that would impair a certified inspector's impartiality, as follows:

14 A certified inspector shall:

15 1. Perform his duties with the highest standard of integrity,
16 professionalism and fidelity to the public and the client, with fairness and
17 impartiality to all.

18 2. Avoid association with any person or enterprise of questionable
19 character or any endeavor that creates an apparent conflict of interest.

20 3. Conduct his business in a manner that will assure his client of the
21 inspector's independence from outside influence and interest which would
22 compromise his ability to render a fair and impartial inspection.

23 4. Not disclose any information concerning the results of an
24 inspection without the approval of the client or his representative for whom the
25 inspection was performed.

26 5. Not accept compensation, financial or otherwise, from more than
27 one interested party for the same service on the same property, without the
28 consent of all interested parties.

6. Not, whether directly or indirectly, accept a benefit from, or offer a
benefit to, a person who is dealing with the client in connection with work for
which the inspector is responsible. As used in this subsection, 'benefit' includes,
without limitation, a commission, fee, allowance, or promise or expectation of a
referral for other work.

7. Not express the estimated market value of an inspected property
while conducting an inspection.

8. Not use the term or designation 'state certified inspector' unless he
is certified.

9. Before the execution of a contract to perform an inspection,

1 disclose to the client any interest of the inspector in a business that may affect an
2 interest of the client.

3 10. Not allow his interest in any business to affect the qualify or results
4 of an inspection.

5 43. According to NRS 645D.900(2), it is a gross misdemeanor for an unlicensed
6 person to hold himself out as a certified inspector, use words in connection with his name
7 implying that he is certified, or describe or refer to any inspection report prepared by him as
8 "certified" or "licensed."

9 44. The Legislative History of NRS Chapter 645D demonstrates the Nevada
10 Legislature's intention that a contractor's building license would not suffice for inspectors of
11 structures or components of structures. A contractor's license issued by the Nevada State
12 Contractors Board, such as a B-2 license, does not suffice support the inspection of structures,
13 components of structures or issuance of inspection reports containing an analysis, opinion or
14 conclusion regarding the condition of a structure or component of a structure under NRS Chapter
15 645D. Also, a structural inspection license cannot be issued to an entity, only to an individual,
16 according to NRS Chapter 645D.080.

17 45. Del Webb has claimed for violation of the Lanham Act, which at 15 U.S.C.
18 §1125(a)(1), provides allows for civil actions against those engaged in false advertising, as
19 follows:
20

21 (a) Civil action.

22 (1) Any person who, on or in connection with any goods or
23 services... uses in commerce any word, term, name, symbol, or device, or any
24 combination thereof, or any false designation of origin, false or misleading
25 description of fact, or false or misleading representation of fact, which --

26 (A) is likely to cause confusion, or to cause mistake, or
27 to deceive as to the affiliation, connection, or association of such person with
28 another person, or as to the origin, sponsorship, or approval of his or her goods,
services, or commercial activities by another person, or

(B) in commercial advertising or promotion,
misrepresents the nature, characteristics, qualities, or geographic origin of his or
her or another person's goods, services, or commercial activities, shall be liable
in a civil action by any person who believes that he or she is or is likely to be

1 damaged by such act.

2 46. Del Webb also claims violations of Nevada’s Deceptive Trade Practices Act,
3 which at NRS 598.0923(1) defines a deceptive trade practice as occurring when a person, in the
4 course of his business or occupation, knowingly “[c]onducts the business or occupation without
5 all required state, county or city licenses.” NRS 598.0953 further provides:
6

7 1. Evidence that a person has engaged in a deceptive trade practice
8 is prima facie evidence of intent to injure competitors and to destroy or
9 substantially lessen competition.

10 2. The deceptive trade practices listed in NRS 598.0915 to
11 498.0925, inclusive, are in addition to and do not limit the types of unfair trade
12 practices actionable at common law or defined as such in other statutes of this
13 State.
14

15 NRS 41.500(2)(e) then provides that an action may be brought by anyone who is a victim of
16 consumer fraud, meaning the commission of deceptive trade practices as defined in NRS
17 598.0915 to 598.0925, inclusive.
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19 47. Defendants have not complied with NRS Chapter 645D and have no proper
20 license to support their structural inspection and inspection reporting activities in Sun City
21 Anthem or other Del Webb communities.
22

23 48. Statutory requirements for professional or occupational licensing are the
24 legislature’s expression of the public policy and the operation of a profession or occupation
25 without the proper license is an irreparable injury. Marlsand v. Pang, 701 P.2d 175, 187 (Haw.
26 1986). The practice of conducting a business or profession in violation of a law requiring a
27 license is properly enjoined.
28

49. NRS 645D is a reasonable expression of Nevada’s interest in protecting its
residents from unlicensed structural inspections. Defendants’ inspection and reporting activities
are not protected by the First Amendment, which does not protect unlawful and unlicensed
commercial activities. Brady v. Posse, 2007 WL 519273, *2 (N.Y. City Civ. Ct. 2007).

1 50. Defendants' deceptions are material and calculated to mislead consumers.
2 Consumers have actually been misled and defendants threaten to continue to mislead consumers.

3 51. The Court finds that Del Webb enjoys a probable likelihood of success on the
4 merits on its claims based on defendants' illegal advertising and solicitations and performance of
5 illegal business activities.

6 52. Defendants' actions in Sun City Anthem and possibly in other Del Webb
7 communities pose very serious questions and substantial threats to the public interest, safety and
8 well-being, including the safety and well-being of Nevada seniors, both of which concerns the
9 Nevada Legislature has addressed by enactment of a licensing scheme for persons conducting
10 structural inspections and/or issuing inspection reports, and by enacting special protection for
11 seniors subjected to deceptive trade practices. A license issued by the Nevada Real Estate
12 Division of the Department of Business and Industry is required under NRS Chapter 645D for a
13 person to conduct home inspections and/or issue inspection reports. The use of deceptive trade
14 practices to defraud "elderly persons" (defined as over 60 years of age by NRS 598.0933) carries
15 enhanced civil penalties under NRS 598.0973. Mojave, Partington and Wilson conducted home
16 inspections and/or issued inspection reports on Del Webb-constructed homes in age-qualified
17 communities in Nevada without necessary licensure under NRS Chapter 645D. Defendants also
18 engaged in deceptive solicitations intended to cause residents, including "elderly persons" as
19 defined by NRS 598.0933, to believe that defendants were acting as agents of or with authority
20 of Del Webb. There is a probable likelihood that plaintiff will prevail on the merits of its claims
21 that defendants' representations and actions actually deceived residents of Sun City Anthem.

22 53. There is a probable likelihood that plaintiff will prevail on the merits of its claims
23 that both Partington and Wilson have engaged in a deceptive trade practice by conducting
24 business or occupation without required state licenses in violation of NRS 598.0923.

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54. There is a probable likelihood that plaintiff will prevail on the merits of its claims that Both Partington and Wilson have engaged in a deceptive trade practice by distributing Mojave's placards, stickers, solicitations and other communications which wrongfully misled.

55. There is a probable likelihood that plaintiff will prevail on the merits of its claims that defendants' conduct of illegal and/or deceptive business activities is not protected and the Court concludes that grant of a preliminary injunction in favor of Del Webb would not impose any cognizable hardship on defendants. Defendants have no right to carry on any unlicensed structural inspection or reporting business as Del Webb has demonstrated that defendants have done.

56. A demand made under Chapter 40 is the equivalent of a civil action.

57. Maintenance is the supporting or promoting of the litigation of another. Champerty is a bargain to divide the proceeds of litigation between the owner of the litigated claim and the party supporting the litigation. 7 *Williston on Contracts* § 15:1 (4th ed.); Schwartz v. Eliades, 113 Nev. 586, 589, 939 P.2d 1034, 1036 (1997), *citing* Lum v. Stinnett, 87 Nev. 402, 407-408, 488 P.2d 347, 350 (1971). Defendants' misleading solicitations and agreements fall within the prohibition of champerty and maintenance and have harmed and continue to threaten to harm Del Webb. Linn v. Stinnett, 87 Nev. 402, 407, 488 P.2d 347, 350 (1971).

58. Del Webb has shown a probable likelihood of prevailing on its claims that it has been damaged by false representations in violation of NRS 41.600(1) and (2)(e) and Del Webb Communities is a victim of misrepresentations initiated by the defendants in violation of Nevada's Deceptive Trade Practices Act.

59. An action for intentional interference with contract relations is based on (a) a valid and existing contract, (b) defendants' knowledge of the contract; (c) defendants' commission of intentional acts meant to disrupt the contractual relationship; (d) actual disruption

1 of the contract; and (e) resulting damages. J.J. Industries, LLC v. Bennett, 119 Nev. 269, 274, 71
2 P.3d 1264, 1267 (2003).

3 60. Del Webb has demonstrated a probable likelihood of success on the merits as to
4 each of the requirements for a claim for intentional interference with contract relations: (a) Del
5 Webb's Home Protection Plan is a valid and existing contract between Del Webb and its
6 homeowners; (b) defendants' knowledge of the Del Webb Home Protection Plan is obvious from
7 their solicitations of homeowners and from the fact that a copy of the Del Webb Home
8 Protection Plan is available on Del Webb's website; (c) defendants intentionally acted to disrupt
9 Del Webb's contractual relationship with its Sun City Anthem homeowners by making false
10 representations to homeowners of defendants' authority under Nevada law to perform structural
11 inspections; (d) actual disruption of Del Webb's contractual relationships and communications
12 with its homeowners occurs as soon as the inspections begin, all with defendants' goal of
13 fomenting litigation, resulting in the cessation of communications between Del Webb and
14 homeowners, which communication is necessary to the operation of the Del Webb Home
15 Protection Plan; (f) Del Webb necessarily suffers damages when its communications with
16 homeowners are disrupted and it is forced to engage in litigation, losing its contractual right to
17 resolve homeowner issues voluntarily, by mediation or arbitration. Moreover, Del Webb suffers
18 loss to its hard-earned reputation when faced with litigation, even class actions, fomented by
19 illegal, unlicensed solicitations by defendants.

22 61. Injunctive relief is proper to prevent or enjoin future interference with contract
23 relations. The York Group, Inc. v. Yorktowne Casket, Inc., 924 A.2d 1234, 1242-43 (Pa. Super.
24 2007)

25 62. Del Webb has shown a probable likelihood of prevailing on the merits of its
26 claims that Mojave's representations made by Partington and Wilson are likely to cause
27

1 confusion, mistake or to deceive the reader as their affiliation, connection, or association.
2 Specifically, these representations were intended give homeowners the impression that
3 defendants affiliated with Del Webb or authorized by Del Webb to conduct inspections and make
4 inspection reports.

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6 63. With respect to the claim for attorneys' fees as substantive damages, Del Webb
7 has shown a reasonable likelihood of success on the merits.

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9 64. Del Webb has shown a probable likelihood of prevailing on the merits of its
10 claims that defendants have interfered with contractual relationships of Del Webb Communities
11 and homeowners in the Sun City Anthem and such interference is likely to continue.

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13 65. Del Webb has shown a probable likelihood of prevailing on the merits of its
14 claims that by performing unlicensed inspections and fomenting litigation based on illegal
15 inspections and inspection reports, Mojave has interfered with Del Webb's ability to make
16 repairs under the warranties that it provides to its homeowners.

17
18 66. Del Webb has shown a probable likelihood of prevailing on the merits of its
19 claims that defendants' actions were intentional, intended or designed to disrupt the contractual
20 relationship between Del Webb and certain homeowners and an actual disruption of those
21 contracts resulted. Defendants' actions were also intended to be the basis of Chapter 40
22 litigation against Del Webb based on illegal inspections and illegal reports based thereon.

23
24 67. Del Webb has shown a probable likelihood of prevailing on the merits of its
25 claims that defendants' illegal structural inspections and provision of reports based thereon,
26 misrepresentations of authority to perform such services and of a relationship with Del Webb in
27 dealing with the public has damaged Del Webb's relationship with consumers and threatens to
28 continue to harm Del Webb's business, reputation and good will and to exposure to Chapter 40
litigation based on illegal inspections and inspection reports.

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68. Del Webb will continue to suffer possible irreparable harm if the Court does not enjoin Defendants from conducting unlicensed inspections, promoting champertous agreements, misrepresenting the relationship between itself and Del Webb, and interfering with Del Webb's contractual warranty program, communications with its Sun City Anthem homeowners, and fomentation of Chapter 40 litigation based on illegal inspections and reports.

69. Mojave threatens to continue to engage in illegal conduct by conducting unlicensed inspections and providing unlicensed inspection reports.

70. The balance of the hardships weighs in favor of granting a preliminary injunction to Del Webb, as Defendants have engaged in illegal conduct by representing their ability to perform residential inspections and performing such inspections and as a result Del Webb has suffered loss through disruption of its contractual relationship with homeowners, damage to its reputation and good will, and damage through the expense of defendant Chapter 40 litigation based upon illegal inspections and inspection reports.

PRELIMINARY INJUNCTION

Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing, IT IS HEREBY ORDERED that Del Webb's Motion for Preliminary Injunction is GRANTED; and

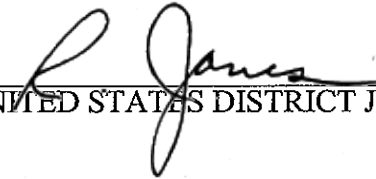
IT IS FURTHER ORDERED that Mojave, Partington, Wilson, and their affiliates and others acting in concert with Defendants, are enjoined from soliciting and/or performing residential inspections and/or providing inspection reports in Sun City Anthem, or any other Del Webb Nevada developments, by means of illegal, unlicensed and false practices, such as the representations, express or implied, that they, or any of them are (1) properly licensed under Nevada law to perform structural inspections; (2) properly licensed under Nevada law to representing to perform, provide or communicate inspection reports; and/or (3) are acting as

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representatives or agents under the authority of Del Webb or Pulte; and

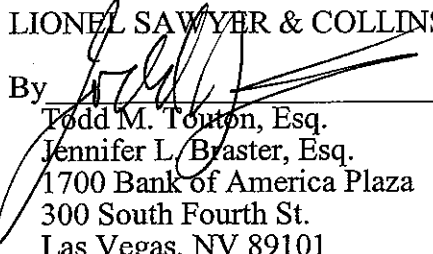
IT IS FURTHER ORDERED that this Preliminary Injunction shall become immediately effective upon its filing and Plaintiff's posting a bond of \$10,000 within 72 hours of the date of the order for the payment of such costs and damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined.

DATED and DONE this 8th day of October, 2008.


UNITED STATES DISTRICT JUDGE

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