

FILED

2015 APR 9 AM 9 33

BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISIONWAL-MART STORES INC., WAL-MART STORES
ARKANSAS, LLC, WAL-MART STORES EAST, LP,
WAL-MART REALTY COMPANY, WAL-MART
REAL ESTATE BUSINESS TRUST, SAM'S WEST,
INC., BEAVER LAKE AVIATION, INC.

PLAINTIFFS

vs.

CASE NO. CV 2013-709-4

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,
ORGANIZATION UNITED FOR RESPECT
AT WALMART ("OURWalmart"), and
DOES 1-10

DEFENDANTS

ORDER

In the above captioned case, Wal-Mart Stores, Inc., Wal-Mart Stores Arkansas, LLC, Wal-Mart Stores East, LP, Wal-Mart Realty Company, Wal-Mart Real Estate Business Trust, Sam's West, Inc., and Beaver Lake Aviation, Inc. (collectively "Plaintiffs") bring this action seeking (1) a permanent injunction prohibiting the United Food and Commercial Workers International Union, Organization United for Respect at Walmart ("OURWalmart") and Does 1-10 (collectively "Defendants") from trespassing on its private property, which it owns or leases, for non-shopping purposes; and (2) a declaratory judgment that the Defendant's entry onto Walmart's private property for non-shopping purposes are acts of trespass regardless of whether Defendants are told to leave and they leave in response. The Court, from the pleadings and arguments of counsel, finds the following:

Permanent Injunction

Plaintiffs are entitled to a permanent injunction prohibiting defendants from trespassing on their private property for non-shopping purposes. Property does not “lose its private character merely because the public is generally invited to use it...” *Lloyd Corp. v. Tanner*, 407 U.S. 551, 565 (1972). The fact that Plaintiffs have made an invitation for shopping purposes does not diminish their possessory interest in property at issue. Further, the invitation extended to the public is to shop for merchandise sold by the retailer. *Id.* There is no invitation to use the parking lot...or the sidewalk except as an adjunct to shopping. *Id.* An injunction may be granted if the petitioner shows (1) that it is threatened with irreparable harm; (2) that this harm outweighs any injury which granting the injunction will inflict on the enjoined parties; (3) a likelihood of success on the merits; and (4) that the public interest favors the injunction. *United Food & Commercial Workers Int’l Union v. Wal-Mart Stores, Inc.*, 120 S.W.3d 89, 92 (Ark. 2003). Irreparable harm is the touchstone of injunctive relief. *Delancy v. State*, 151 S.W.3d 301, 305 (Ark. 2004) (citing *United Food & Commercial Workers Int’l Union v. Wal-Mart Stores, Inc.*, 120 S.W.3d 89, 92 (Ark. 2003)). Harm is irreparable when it cannot be adequately compensated with money damages or remedied by the court. *Id.*

In *United Food*, union workers entered Walmart meat departments in several states and distributed information about its union to employees. *Id.* at 91. When these union representatives were asked to leave the premises, they complied. *Id.* Unlike the conduct of the union in *United Food*, in this case Defendants did more than just hand out pamphlets of information. Defendants’ demonstrations involved hundreds of people engaged in: chanting; banging Walmart merchandise like drums; congregating in the parking lot; congregating on the aproning sidewalk; causing customers to swerve around demonstrators; song and dance routines

on the sales floor; picketing; parades; rallies; hand billing; and interfering with customer shopping activity. Additionally, unlike the union in *United Food*, Defendants refused to leave when requested. Defendants' actions have surpassed merely handing out information and are in the sphere of causing irreparable harm.

Plaintiffs argue that the activities stated above upset customers by interfering with their shopping experience and can ultimately deter customer shopping in general. It is impossible to know how much business has been affected by these multiple instances of disruption or how much business would be affected if Defendants are not restrained from this type of conduct. Plaintiffs have established that they are threatened with irreparable harm by Defendant's actions. The harm to Plaintiffs is outweighed by any injury to Defendants because the injunction is very limited and restrictive in its terms. The injunction will prohibit any non-employees from engaging in non-shopping activities while on Walmart's private property, both owned and leased, in Arkansas. Walmart's invitation to the public to use its property is not unrestricted, but rather it is meant for customers to do business on its property. Plaintiffs do not make invitations to authorize demonstrations, parades, or public events. Rather their invitation is to use the premises for shopping purposes or in the furtherance of such purposes. Any retail easements are not made to invite general public use for non-shopping purposes, but rather to provide public access to retailers to shop, work, and conduct lawful business. These permissive easements and invitations benefit public interest by providing the means to obtain merchandise and satisfy general needs.

Since Defendants have exceeded the scope of their invitation on Plaintiffs' private property, this court grants a permanent injunction in favor of Plaintiffs to enjoin Defendants from coming onto Walmart's private property in Arkansas and engaging in non-shopping conduct.

Declaratory Judgment

Plaintiffs are entitled to a declaratory judgment that Defendants commit trespass when they come onto Walmart's private property for non-shopping purposes regardless of whether they are told to leave and leave in response. Declaratory relief may be granted where (1) there is a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved in the controversy must be ripe for judicial determination. *McCutchen v. City of Fort Smith*, 425 S.W.3d 671, 680-81 (Ark. 2012).

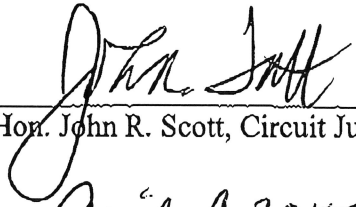
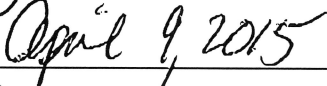
Declaratory judgments are used to determine the rights and liabilities of the parties. *Dep't of Human Servs. Civitan Ctr.*, 386 S.W.3d 432, 437 (Ark. 2012). The statutory objective of a declaratory judgment "is to settle and to afford relief from uncertainty and insecurity with respect to rights..." *McCutchen*, 425 S.W.3d at 680. Therefore, a declaratory judgment will not be granted unless the danger or dilemma of the plaintiff is currently present and the prejudice to his position is actual or genuine, not merely speculative or contingent. *Id.* "When one crosses the boundaries of the invitation, he ceases to be an invitee and becomes...a trespasser." *Daniel Const. Co. v. Holden*, 585 S.W.2d 6, 9 (Ark. 1979). Defendants crossed the boundaries of their invitation when they engaged in non-shopping conduct. Defendants have stated that they will continue their demonstrations and activities absent an order prohibiting such conduct, making Plaintiffs' dilemma both present and actual.

Plaintiffs assert that they have a right to prohibit trespass on their private property for conduct outside of the scope of their retail invitation. Defendants oppose the right asserted by Plaintiffs. Plaintiffs are seeking to protect their private property rights. Finally, the issue of

trespass is ripe for judicial determination because the facts themselves are developed sufficiently to demonstrate that such a determination is proper. Plaintiffs have met each element to entitle them to a declaratory judgment against Defendants.

Considering the threat of irreparable harm posed by the Defendants' actions on Walmart's business, property, and customers, Plaintiffs are entitled to a declaratory judgment, and the Court hereby finds and declares that Defendants' entrance onto Walmart private property for non-shopping purposes constitutes a trespass.

IT IS SO ORDERED.


Hon. John R. Scott, Circuit Judge

Date

cc: Christopher D. Plumlee
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
5414 Pinnacle Point Drive, Suite 500
Rogers, AR 72758
VIA TELEFAX: (479) 464-5680
Attorney for Plaintiff

cc: Steven D. Wheelless, admitted *pro hac vice*
Douglas D. Janicik, admitted *pro hac vice*
Steptoe & Johnson, LLP
201 East Washington Street, Suite 1600
Phoenix, Arizona 85004
VIA TELEFAX: (602) 257-5299
Attorneys for Plaintiff

cc: James Lingle
Lingle Law Firm
110 South Dixieland
Rogers, AR 72758
VIA TELEFAX: (479) 636-0095
Attorney for Defendants

cc: George Wiszynski
Joey Hipolito
UFCW International Union
1775 S. Street, N.W.
Washington, DC 20006
VIA TELEFAX: (202) 728-1803
Attorneys for Defendants