

**COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO CIVIL DIVISION**

MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	Case No. 2019 CV 05444
	:	
	:	
Plaintiff,	:	JUDGE: GERALD PARKER JR
	:	
v.	:	
	:	
DARREN POWLETTE, et al.,	:	MEMORANDUM IN OPPOSITION TO
	:	DEFENDANTS' MOTION TO DISSOLVE
Defendants.	:	INJUNCTION ISSUED 12/29/21

Now comes Plaintiff, the Miami Township Board of Trustees (the “Township”), and submits the following Memorandum in Opposition to the Motion to Dissolve Injunction Issued 12/29/21 filed by Defendants Darren Powlette and Stoney Hill Rustic Wedding, LLC (together, the “Defendants”). Defendants have not set forth relevant evidence demonstrating that they can meet the standard necessary to dissolve the injunction. Further, Defendants are currently in contempt of this Court’s order and have failed to pay court ordered fines and fees. For the reasons stated herein, Defendants’ Motion to Dissolve Injunction Issued 12/29/21 should be denied.

I. Facts

On November 18, 2019, Plaintiff initiated this matter seeking a preliminary and permanent injunction to enjoin Defendants from continuing to use 7757 Upper Miamisburg Road, Miami Township, Montgomery County, Ohio (the “Property”) in violation of the Miami Township Zoning Resolution. *See generally*, Complaint, Nov. 18, 2019. The Property is located in an agricultural district, and Defendants had previously obtained an Agricultural Exemption for the barn located on the Property, stating the barn would be used exclusively for agricultural or agritourism purposes. *Id.* The Township sought injunctive relief after discovering that Defendants

were using the Property as a venue to host weddings and other special events, in violation of the Miami Township Zoning Resolution. *Id.*

On December 13, 2021, this Court granted summary judgment in favor of the Township and denied the cross-motion of Defendants. *See generally*, Decision and Entry, December 13, 2021. The Court found that Defendants’ activities on the Property were not “agriculturally related” activities within the meaning of the statutory language. *Id.* On December 29, 2021, this Court enjoined Defendants “from renting, leasing, or otherwise operating for a fee, the barn located at 7757 Upper Miamisburg Road, Miami Township, Montgomery County for weddings, receptions, graduation parties, or other celebratory events.” *Id.*

Since this Court granted the Injunction, Defendants have repeatedly violated the Court’s orders by continuing to host celebratory events at the Property. On February 20, 2024, Defendants were sanctioned as a result of two separate contempt motions. *See generally*, Decision and Entry and Order Granting Plaintiff’s Motion to Show Cause and Amended Motion to Show Cause. Defendants were ordered to pay contempt fines, attorneys fees, and to refund the funds collected in the amount of \$48,950.00 within eighteen months of February 20, 2024. *Id.* As of the date of this filing, Defendants have not paid these court ordered fines or fees.

II. Law and Argument

A. Legal Standard for Granting Motions to Dissolve Injunction

In order to obtain a dissolution of an injunction, the “movant must demonstrate *significant* ‘changes in fact, law, or circumstance since the previous ruling.’” (Emphasis added.) *In re Ohio Execution Protocol Litigation*, 2017 WL 3276017, *2 (S.D.Ohio 2017), quoting *Gill v. Monroe Cnty. Dep’t of Soc. Servs.*, 873 F.2d 647, 648-49 (2d Cir. 1989). The court’s ability to dissolve injunctions arises from its authority “to relieve inequalities that arise after the original order.” *Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d 1119, 1124 (9th Cir. 2005), quoting *Favia*

v. Indiana Univ. of Pennsylvania, 7 F.3d 332, 338 (3d Cir. 1993). The changes in fact, law, or circumstance must be *significant*.

In *Internatl. Union v. Baretz*, the district court issued a preliminary injunction to enjoin the Baretz defendants from the transfer of any assets. *Internatl. Union, United Auto., Aerospace & Agr. Implement Workers of America, Local Union No. 540 v. Baretz*, 156 F.3d 1230, 1998 WL 449688, *2 (6th Cir. 1998). Baretz subsequently filed a motion to dissolve the preliminary injunction, rearguing the same issues it had asserted in opposing the preliminary injunction. *Id.* In its motion to dissolve the injunction, Baretz failed to indicate any relevant change in circumstances that would warrant dissolution of the injunction. *Id.* at *5. The district court denied the motion to dissolve the injunction and Baretz appealed. *Id.* at *2. The Sixth Circuit held that Baretz merely reargued the same issues to the district court that it had argued in its opposition to the issuance of the preliminary injunction and agreed that Baretz failed to raise any changed circumstances or new arguments that would warrant a dissolution of the preliminary injunction. *Id.* at *5. The Sixth Circuit affirmed the district court's decision to deny the motion to dissolve. *Id.*

Here, Defendants have failed to raise any significant changed circumstances or new arguments that would warrant a dissolution of the injunction. Defendants merely state that they obtained an Ohio Farm Winery Permit on July 27, 2022. *See* Motion to Dissolve. However, as will be discussed below, the relevant issues here are (1) whether Defendants are actively engaged in viticulture at the Property and (2) whether the barn that is the subject of the injunction is “used primarily for vinting and selling wine.” *See generally* R.C. 519.21(A). Merely obtaining a permit from the Ohio Division of Liquor Control does not address the relevant issues and, therefore, does not amount to a significant change in fact, law, or circumstance. Accordingly, Defendants' motion should be denied.

B. Defendants Have Not Submitted Relevant Evidence

This Court has already found that “there is no material issue of fact that defendants are not using the barn ‘primarily for vinting and selling wine and that [the barn] are located on land any part of which is used for viticulture.’” *Id.* Decision and Entry on Cross-Motions for Summary Judgment, Dec. 13, 2021, pp. 3-4. As such, this Court properly concluded that “the zoning authority over the defendants’ barn is not prohibited by R.C. 519.21(A).” *Id.* The evidence attached to Defendants’ Motion to Dissolve the Injunction does not address the relevant facts and is therefore insufficient to justify dissolving the injunction.

R.C. 519.21(A) forbids a township from prohibiting:

the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, *including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture*, and no zoning certificate shall be required for any such building or structure.

(Emphasis added.) *Id.* In analyzing whether a building is “used primarily for vinting and selling wine,” the Ohio Supreme Court has explained that “[t]he word ‘primary’ means ‘of first rank, importance, or value.’” *Litchfield Twp. Bd. of Trustees v. Forever Blueberry Barn, L.L.C.*, 160 Ohio St.3d 70, 2020-Ohio-1508, ¶ 11 quoting *Merriam-Webster’s Collegiate Dictionary* 986 (11th Ed.2003). Defendants now seem to argue that this exemption applies, although Defendants never directly state that the barn is “used primarily for vinting and selling wine.” *See generally* Defendants’ Motion to Dissolve Injunction.

Notably, the only factual support Defendants offer is that they obtained an Ohio Farm Winery Permit nearly three years ago. However, merely obtaining a liquor permit does not mean, or even suggest, that Defendants are *primarily* using the barn for vinting and selling wine. Defendants submit no evidence of a vinting operation. Defendants submit no evidence of sales of wine. Defendants submit no evidence showing that the barn is primarily used for either purpose.

In short, Defendants have not submitted evidence on the relevant factors and, therefore, Defendants' Motion should be denied.

C. Defendants' Contempt Status

Additionally, Defendants are currently violating this Court's order. In this Court's February 20, 2024 Decision and Entry and Order Granting Plaintiff's Motion to Show Cause and Amended Motion to Show Cause, Defendants were ordered to pay contempt fines (totaling \$8,750), attorneys fees (\$9,050), and to refund the funds collected in the amount of \$48,950.00 within eighteen months of February 20, 2024. However, as of the date of this filing, Defendants have not paid these fines, fees, or refunds. Accordingly, Defendants have not complied with the Court's February 20, 2024 order. At a minimum, Defendants should comply with this Court's prior order before seeking further relief or modification of the Court's prior injunction. For this additional reason, the Motion to Dissolve the Injunction should be denied.

III. Conclusion

For the reasons stated herein, the Township requests that Defendants' Motion to Dissolve the Injunction Issued 12/29/21 be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2025, this document was eFiled via the Court's eFile system, which will send notifications of this filing to the following:

Theresa A. Baker
Attorney for Defendants

/s/ Samatha E. Bagley
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