

VERMONT SUPERIOR COURT
Washington Unit
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802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 25-CV-05788

AMPS, LLC et al v. Whitehill Invention Five, LLC et al

ENTRY REGARDING MOTION

Title: Motion for Preliminary Injunction EMERGENCY / EX PARTE - Denied on the record (Motion: 4)
Filer: Gregory Scott Nagurney
Filed Date: May 29, 2026

The motion is DENIED.

The Court took testimony from the parties to this matter and announced its findings and conclusions at the end of the hearing. This Order is intended to memorialize that decision and provide the parties with some interpretative guidance to their on-going lease relationship.

As an initial matter, the Court has set out the standard for a preliminary injunction under Rule 65 in its previous orders. The Court will not repeat it here, but it will direct the parties to the Court's earlier ruling on May 29, 2026 laying out the standard and relevant analysis.

Under Rule 65's standards, the Court finds that Plaintiffs are not entitled to a Preliminary Injunction at this time based primarily on the issue of irreparable harm. V.R.C.P. 65(b). The evidence is that Defendants' preliminary denial of the proposed sub-tenant is primarily a financial harm that can be remedied by money or rent credits.

The evidence shows that Plaintiffs stand to lose approximately \$600 per month until either the issues with this proposed tenant are resolved or a new tenant is obtained and approved. Such monetary damages are available to Plaintiffs if they prevail on their ultimately claim that Defendants improperly withheld their permission to the sub-leasee under Paragraph 37 of the Lease. See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (noting that an element of irreparable harm includes a showing that "that remedies available at law, such as monetary damages, are inadequate to compensate for that injury"). At this time, there is no evidence of larger reputational injury or injury to Plaintiffs' business that would cause the Court to find or conclude that the true harm to Plaintiffs' lies beyond what can be cured by the

restoration of this lost rent. Based on this finding, the Motion for a Preliminary Injunction is **Denied.**

While this resolves the most immediate issue of the preliminary injunction, the Court will note that apart from the irreparable harm issue, Defendants' stated reasons for rejecting the tenant are at odds with the language of the parties' lease. First, Defendants have asserted that Plaintiffs are not entitled to sublet the property based on the allegations that Plaintiffs are in default. At present, this is merely an allegation. Defendants have not established that Plaintiffs are in default of their lease obligations as a matter of law. Until such proof is established, Defendants are not entitled to abrogate or remove Plaintiffs' rights under the lease. The Court will note that to the extent that Defendants have offered this argument as justification to Plaintiffs for rejecting their tenant, it is without legal support, and it is inconsistent with the terms of the lease and Plaintiffs current status as tenants in possession under the terms of the parties' lease. It is insufficient as a matter of law to justify the denial of an otherwise acceptable sub-tenant under Paragraph 37 of the lease.

Similarly, the Court finds Defendants' interpretation of the lease as per se prohibiting an office-based massage therapist to be inconsistent with the general terms of the lease and the multi-use purpose of the leased space. In particular, the Court has looked at paragraphs 14, 15, and 16 of the Lease which define Plaintiffs' terms of use and occupation under the lease. The use is broadly defined and marked by general language. For example, Paragraph 14 states that: "Tenant will open the whole of the Premises for business to the public fully fixtured . . . and will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner . . ." Furthermore, the testimony indicated that Plaintiffs are in the business of renting out the Premises to sub-tenants including professionals, artists, and others in need of office space, and that they have used a portion of the space as a gallery. Within this broad language and purpose, the Court finds that Defendants' more narrow view of what type of tenant would be acceptable is not supported by the plain language of Paragraphs 14, 15, and 16, and rejection on these grounds, in and of itself, would likely not be reasonable under Paragraph 37.

A massage therapist's use of a portion of the rental space is not necessarily inconsistent with a suite of offices. Defendants at the hearing raised a number of specific concerns about how the proposed tenant would use the space, including potential sound issues, privacy issues, sufficiency of the existing restroom, and the impact of individuals entering and exiting the space

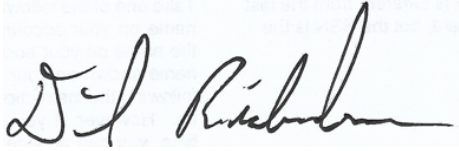
on a regular basis. These are reasonable concerns, and the merit response and clarification from Plaintiffs. At the same time, if these issues can be reasonably and sufficiently addressed, then the massage therapist becomes another office user. He would occupy a discrete space, would not create noise or issues with other tenants, and would work within the confine of his rented space. Presuming that there are no issues with zoning, professional licensure, or other legal or regulatory standards, then his occupancy is not inherent inconsistent with office space or all that different than a lawyer or accountant who sees clients in a similar setting.¹

The Court has made these additional findings to the parties as they are necessarily implicated by the issues raised in Plaintiff's motion, and they concern issues that are likely to be repeated as the parties have indicated that Plaintiffs expect another opening in August of this year.

ORDER

Based on the foregoing, the motion for a preliminary injunction is **Denied**.

Electronically signed on 6/18/2026 7:37 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge

¹ There were references to building rules and standards in the testimony. While these rules have not been put into place, both parties appear to recognize that implementing standards to ensure safety, maintenance, and quiet enjoyment between the building's various occupants is neither unreasonable nor beyond Defendants' general authority as owners of the property. At the same time, the parties recognize that such terms and conditions cannot, without agreement or allonge, limit or alter their rights under the lease agreements. As such, the Court will not offer findings regarding these but will simply note that the applicability of any such rules, outside a meeting of the minds, will depend on how much they embody practical considerations and less on any inherent enforceability derived from their mere existence.