

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
SEP 29 2017

WAL-MART STORES, INC.,
et al,

: Case No. A1406453

Plaintiffs,

: Judge Robert C. Winkler

-v-

:

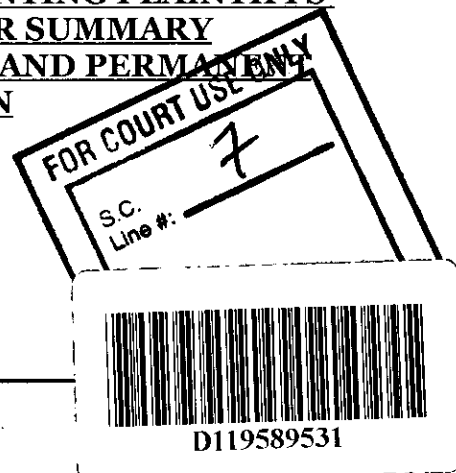
ENTRY GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND PERMANENT
INJUNCTION

UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL
UNION, et. al.,

:

Defendants.

:



This matter came before the Court on Plaintiffs', Wal-Mart stores, Inc., Wal-Mart Stores East, LP, Walmart Stores East, LLC, Wal-Mart Real Estate Business Trust, and Sam's Real Estate Business Trust (hereinafter collectively referred to as "Walmart") and Defendants', United Food & Commercial Workers international Union, United Food and Commercial Workers Union, Local 75, ("Local 75") Organization United For Respect at Walmart ("Our Walmart") nka Organization United for Respect ("OUR") Ohio Organizing Collaborative ("OOC"), William J. Dudley, Andrew Cone, Mercedes Guy, Ryan McGuire and Kevin Blair, (hereinafter referred to as "Defendants") cross motions for summary judgment.

The Court has considered the arguments of counsel, law of Ohio, the depositions, exhibits, affidavits, testimony of the witnesses received at the hearing on preliminary injunction and being otherwise fully apprised in the premises, finds Walmart's motion for

summary judgment to be well taken hereby grants same. Consequently, Defendants' motion for summary judgment is hereby denied.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there are no genuine issues of material fact that remain to be litigated and the moving party is entitled to judgment as a matter of law. Civ. R. 56(C); *Celotex Corp. v. Catrell*, 477 U.S. 317 (1986). Summary judgment should be granted if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, if any, timely filed in the action and construed most strongly in favor of the non-moving party, show that there is no genuine issue as to any material fact. Civ. R. 56(C). The burden of establishing that the material facts are not in dispute, and that no genuine issue of fact exists, is on the party moving for summary judgment. *Vahila v. Hall*, 77 Ohio St.3d 421, 674 N.E.2d 1164 (1997). If the moving party asserts that there is an absence of evidence to establish an essential element of the non-moving party's claim, the moving party cannot discharge this burden with a conclusory allegation, but must specifically point to some part of the record which affirmatively demonstrates this absence of evidence. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

The Supreme Court of Ohio has established three factors to be considered upon a motion for summary judgment. These factors are:

(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Esber Bev. Co. v.*

Labatt United States Operating Co., L.L.C., 138 Ohio St. 3d 71, 2013-Ohio-4544.

Once a motion for summary judgment has been made and supported as provided in Civ. R. 56(C), the non-moving party then has a reciprocal burden to set forth specific evidentiary facts showing the existence of a genuine issue for trial and cannot rest on the allegations or denials in the pleadings. *Wing v. Anchor Media, Ltd. of Texas, 59 Ohio St.3d 108 (1991)*.

In view of the foregoing standards governing Walmart's motion for summary judgment, the Court hereby adopts the substance of the Court's preliminary injunction entered November 24, 2014 as its permanent injunction as necessitated by the passage of time, supplemental discovery, and the additional materials received in support of Walmart's motion for summary judgment.

The Court, having thoroughly reviewed all evidence provided therewith makes the following findings of fact:

1. Walmart operates approximately 175 stores throughout Ohio in multiple formats, including discount stores, Supercenters, and Sam's Clubs.
2. Defendants and their agents, representatives, and supporters (except for current Walmart employees) have unlawfully trespassed onto and into Walmart's private property and stores across Ohio, with activity ranging from a single or few individuals trespassing onto Walmart's property repeatedly, to larger-scale demonstrations at numerous stores.
3. Defendants and their agents, representatives and supporters (except for current Walmart employees) have committed and continue to threaten to

commit unlawful acts on Walmart's private property. Walmart's evidence establishes that Defendants, their agents, representatives, and supporters have engaged in multiple disruptive demonstrations on private property in the possession and control of Walmart, interfering with Walmart's use and enjoyment of its private property and the conduct of its business. These demonstrations have included, but are not limited to, the use of "flash mobs," handbilling, placards, singing, chanting, stomping, yelling, sound amplification (such as bullhorns or megaphones), "video bombs," manager confrontations, picketing, and the blocking of ingress and egress to and from Walmart's private property.

4. Walmart has repeatedly notified Defendants, their agents, and representatives (except for current Walmart employees) that any privilege or license for them or their followers to enter onto Walmart's private property for the purpose of engaging in any activity other than shopping has been revoked. Notwithstanding this revocation for any disallowed purpose, Defendants, their agents, and representatives (except for current Walmart employees) have continued to trespass onto Walmart's private property and conduct demonstrations on Walmart's private property. This Court specifically finds that each of Defendants' (and its agents' and representatives') entries onto Walmart's private property following Walmart's oral and written notices to Defendants revoking any privilege to enter onto Walmart's private property for purposes other than shopping constitutes an "unauthorized entry" onto Walmart's private

property, and that the number of unauthorized entries by Defendants amounts to a continuing trespass.

5. In addition to Defendants' repeated and continuing acts of trespass onto Walmart's private property across the State of Ohio, this Court also finds, based on the evidence presented, that Defendants have committed or are likely to commit acts of nuisance in the exterior parking lots, aprons, and sidewalks of Walmart's building-only leased stores, to include interference and disruption with Walmart customers' or associates' access to, or ability to move around on or enter/exit Walmart's private property.
6. As a result of these unauthorized entries, Walmart has been disturbed in the safety, shopping experience, and working environment that it can provide to its employees and customers working and shopping in its stores. Defendants' activities have also damaged Walmart's reputation and goodwill, increased its security costs, created a potential for violence, prevented Walmart associates from doing their jobs, and caused a loss of productivity due to Walmart's need to monitor and control Defendants' trespassory activities. The cumulative effect of the harms wrought by Defendants on Walmart has thereby deprived Walmart of an adequate remedy at law to address Defendants' continuing trespass and continued threats to enter onto and into Walmart's private property to engage in their demonstrations and other disruptive conduct.
7. The Court further finds that, absent a Permanent Injunction, Defendants' unauthorized entries onto Walmart's private property throughout the State of Ohio are likely to continue in the future and a substantial and

irreparable injury to Walmart and its property would be unavoidable. The evidence establishes greater injury will be inflicted upon Walmart by the denial of a Permanent Injunction than will be inflicted upon Defendants by the granting of relief, as Defendants can conduct lawful demonstrations on public property adjacent to Walmart's private property.

8. The Court further finds that "Walmart's private property" means:
 - a. the area inside its retail stores and other facilities in Ohio; and
 - b. the apron sidewalks, parking lots, and other areas on any parcel of property in Ohio that Walmart controls as owner or lessee, which currently includes Store Nos. 1239, 1264, 1289, 1330, 1331, 1333, 1368, 1407, 1410, 1416, 1427, 1429, 1433, 1441, 1443, 1445, 1448, 1463, 1478, 1495, 1504, 1519, 1521, 1539, 1564, 1594, 1595, 1622, 1628, 1724, 1839, 1857, 1863, 1894, 1911, 1913, 1927, 1937, 1986, 1990, 2035, 2063, 2073, 2078, 2098, 2115, 2124, 2149, 2191, 2193, 2197, 2209, 2250, 2266, 2275, 2309, 2313, 2316, 2323, 2350, 2359, 2362, 2400, 2426, 2429, 2441, 2506, 2541, 2542, 2572, 2605, 2613, 2666, 2725, 2774, 2910, 2966, 3206, 3250, 3251, 3262, 3282, 3293, 3300, 3342, 3445, 3447, 3486, 3502, 3515, 3571, 3580, 3581, 3608, 3641, 3656, 3722, 3749, 3765, 3783, 3784, 3792, 3809, 3840, 3860, 4255, 4282, 4342, 4479, 4750, 4846, 4947, 4962, 4963, 5028, 5029, 5030, 5066, 5083, 5104, 5184, 5185, 5203, 5285, 5309, 5355, 5374, 5385, 5387, 5409, 5410, 5466, 5471, 5499, 5857, 6242, 6302, 6305, 6307, 6308, 6314, 6317, 6322, 6326, 6327,

6375, 6380, 6407, 6450, 6517, 6528, 6544, 8131, 8132, 8136, 8139, and 8152, and as modified from time to time in recognition of Walmart's opening and closing similarly situated stores throughout the State of Ohio.

9. The Court further finds that "Associate" means a current Walmart employee.
10. The Court further finds Defendants' conduct on Walmart's private property constitutes trespass under Ohio Law.
11. The Court further finds Defendants' conduct on easements granted to Walmart located at building-only leased property constitutes Nuisance under Ohio Law.

WHEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:

1. Walmart has met the requirements for the issuance of a permanent injunction in this matter, and Walmart's motion for Summary Judgment is hereby GRANTED.
2. Effective as of the date of this Order, Defendants, their parents, subsidiaries, and affiliates, as well as their non-Walmart associate officers, employees, and agents, and all other non-Walmart associate persons who act in concert with Defendants, or at their direction and control, are permanently hereby enjoined and restrained, directly or indirectly, from:
 - a. entering onto Walmart's private property in the State of Ohio to engage in activities such as picketing, patrolling, parading, demonstrations, chanting, "flash mobs," handbilling, solicitation, customer disruptions, manager delegations or confrontations, or associate engagement for a non-shopping purpose;

- b. entering onto Walmart's private property in the State of Ohio without permission for any purpose other than shopping for and/or purchasing merchandise at Walmart's stores;
 - c. interfering with, obstructing, or blocking Walmart's and its customers' access to, and use of, easements granted to Walmart across apron sidewalks, and parking lots at Store Nos. 1503, 1707, 1718, 1750, 1812, 1895, 2199, 2211, 2361, 2447, 2471, 2726, 2914, 3812, 4609, 5082, 6404, 6556, located in Ohio for which Walmart has a building-only lease, and as modified from time to time in recognition of Walmart's opening and closing similarly situated stores throughout the State of Ohio; and
 - d. engaging in any nuisance conduct off Walmart's private property which disrupts and/or interferes with Walmart customers' or associates' access to, or ability to move around on or exit, Walmart private property in the State of Ohio.
3. Defendant shall immediately post this Order for a Permanent Injunction on Defendants' websites, Facebook pages, Twitter sites, and any other internet and/or social media outlets under their control or used by Defendants.
4. Failure of Defendants to comply with this Permanent Injunction upon service of same, upon proper proof, shall result in a finding of Contempt of Court.

This is a final appealable order.

IT IS SO ORDERED

COURT OF COMMON PLEAS
ENTER
Winkler
HON. ROBERT C. WINKLER
Judge Robert C. Winkler
THE CLERK SHALL SETtle
TO PARTIES PURSUANT TO CIVIL
RULE 1.4 WHICH SHALL BE TAXED
AS COSTS HEREIN.

Date

9-29-17