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6 of Trustees of The Leland Stanford
7 Junior University

MAY 1 - 1965
GEORGE E. BRADY, Clerk
BY D. Y. LEAVE
DEPUTY

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA
10 PALO ALTO BRANCH

11
12 THE BOARD OF TRUSTEES OF THE LELAND)
13 STANFORD JUNIOR UNIVERSITY, a body)
14 having corporate powers,)

15 Plaintiff,)

16 vs.)

17 ALAN C. ALHADEFF, JOHN WALLACE AVERY,)
18 RONALD BERLIANT, ANNE CLAUDIA BAUER,)
19 WILLIAM C. BLACK, RICHARD STEVEN BOGART,)
20 BARRY LINCOLN CAPRON, ROBERT ARDEN DELFS,)
21 ARTHUR M. EISENSON, JEANNE TOBY FRIEDMAN,)
22 BARBARA ANN GOLDIE, WILLIAM WELSH GRAHAM,)
23 HALLAM CALVIN HAMILTON, MARY ANSORGE HANSON,)
24 STEPHEN JOHN HEISER, MARC DAVID HELLER,)
25 KRISTIN DANA HIND, SUSAN LEE HUDGENS,)
26 RICHARD A. LEVIN, MICHAEL MATTHEW MENKE,)
27 JOHN C. PERRIN, NEAL OKABAYESHI, DALE)
28 POLITZER, DAVID FRANCIS PUGH, PAUL RUPERT,)
29 AMANDA GWYN RUTHERFORD, WILBUR ARROYO,)
30 JAMES ELLIS SHOCH, JOHN FREDERICK SHOCH,)
STEPHEN S. SMITH, GUY DOUGLAS SMYTHE,)
DON PHILIP STUART, PHILIP J. TROUNSTINE,)
MICHAEL DAVID VAWTER, DORON WEINBERG,)
MICHAEL M. WEINSTEIN, MARC ALLAN WEISS)
AND DOE ONE THROUGH DOE FIVE HUNDRED,)
INCLUSIVE,)

Defendants.)

P16419

No.

MEMORANDUM OF POINTS
AND AUTHORITIES

31 The Board of Trustees of The Leland Stanford Junior
32 University (hereinafter referred to as "the Board of Trustees"),

1 a body having corporate powers, is the legal entity that main-
2 tains and operates Stanford University, a private educational
3 institution. The Board of Trustees is the owner and has posses-
4 sion of the real property known as the Stanford campus. The
5 buildings commonly known at Stanford as the Applied Electronics
6 Laboratory and Encina Hall comprise a part of the Stanford campus.

7 The issues presented in this proceeding are the right
8 of the Board of Trustees to prevent unauthorized persons from
9 occupying or threatening to occupy a building or buildings owned
10 by the Board of Trustees, from interfering with the free use and
11 enjoyment of University property and with the conduct of
12 University business and from entering the Stanford campus with
13 the intent of engaging in any of the foregoing activities.

14 It is fundamental law that there is an actionable
15 trespass each time a person wrongfully enters on property in
16 the occupation and possession of another.

17 MacLeod v. Fox West Coast Theatres Corp.,
18 10 Cal.2d 383 (1937);

19 Restatement of Torts 2d § 158.

20 "Every wrongful entry on land in the occupation
21 and possession of the owner constitutes a trespass.
22 In fact, for every wrongful invasion of the rights
23 of another in real property, from which damage re-
24 sults, an action may be maintained." 48 Cal.Jur.2d,
25 Trespass, Sec. 10.

26 When a private property owner requests an individual
27 to leave the property, that individual becomes a "trespasser"
28 if he remains on the property, for he is there without the
29 owner's consent and against the owner's will.

30 MacLeod v. Fox West Coast Theatres Corp.,
10 Cal.2d 383, 387 (1937).

1 "If a license which authorizes a use that cannot
2 be made the basis of an easement is revoked, the
3 ordinary effect is to make the licensee's further use
4 of the land in respect to which the license had exist-
5 ed unlawful. Thus, if the holder of a theater ticket
6 is told that his right to remain in a theater which
7 he had entered by virtue of holding the ticket has
8 been revoked, he will be a trespasser in remaining in
9 the theater to view the play or other entertainment
10 which the ticket entitled him to see. He will not be
11 made a trespasser immediately upon the revocation of
12 the license because he is entitled to a reasonable
13 time to remove himself from the theater. But he will
14 become a trespasser in doing anything other than that
15 which is incidental to his reasonably removing himself.
16 The fact that the revocation of his license may be a
17 breach of contract for which he is entitled to remedy
18 will not prevent him from being a trespasser if he
19 refuses to leave the theater." American Law of
20 Property, Sec. 8.121.

21 "One whose presence on land is pursuant to a
22 consent which is restricted to conduct of a certain
23 sort, is a trespasser if he intentionally conducts
24 himself in a different manner, . . ." Restatement
25 of Torts 2d, Section 168, Comment d.

26 When repeated or continuing trespasses are threatened
27 and the remedy at law is inadequate, it is proper for the court
28 to grant an injunction restraining the trespasser.

29 Harmon v. De Turk,
30 176 Cal. 758, 762 (1917);

Allen v. Stowell,
145 Cal. 666 (1905);

Reitz v. Wollwert,
217 Cal. 406 (1933).

23 "The mere fact that one has a right if [sic] action
24 at law will not prevent his right to equitable
25 relief by way of injunction against a threatened
26 trespass, if under the circumstances the legal
27 remedy would fail of affording adequate relief
28 against the impending wrong. It is well settled
29 that the remedy by injunction may be invoked to
30 restrain acts or threatened acts of trespass in any
instance where such acts are or may be an irrepar-
able damage to the particular species of property
involved." Kellogg v. King, 114 Cal. 378, 385 (1896).

The remedy at law is inadequate when damages would not
suffice to redress the wrong, or when legal redress would require

1 a multiplicity of suits.

2 Kellogg v. King,
3 114 Cal. 378, 386 (1896);

4 Uptown Enterprises v. Strand,
5 195 Cal.App.2d 45, 52 (1961);

6 Empire Star Mines Co. v. Butler,
7 62 Cal.App.2d 466, 529 (1944).

8 Defendants' actions in entering and occupying the
9 Applied Electronics Laboratory without the permission and against
10 the will of the owner of the property and in remaining in said
11 building after being requested to leave clearly constituted a
12 trespass. Likewise, defendants' actions in entering and
13 occupying Encina Hall without the permission and against the
14 will of the owner constituted a trespass. The damages suffered
15 by plaintiff by reason of defendants' wrongful occupation of
16 such buildings and consequent disruption of the conduct of
17 administrative, academic and scientific research activities
18 cannot be measured in dollars. The remedy at law is therefore
19 wholly inadequate. Moreover, defendants have threatened to
20 reoccupy the Applied Electronics Laboratory and Encina Hall and
21 have threatened to occupy other University buildings until
22 certain types of research on the Stanford campus and at Stanford
23 Research Institute come to an end. The remedy at law would
24 therefore require a multiplicity of suits; for this reason, too,
25 the remedy at law is wholly inadequate.

26 Although granting a preliminary injunction rests in
27 the sound discretion of the trial court, that discretion should
28 be exercised in favor of the party most likely to be injured.

29 Hicks v. Compton,
30 18 Cal. 206, 210 (1861);

McCoy v. Matich,
128 Cal.App.2d 50, 52 (1954);

1 Riviello v. Journeymen Barbers, etc. Union,
2 88 Cal.App.2d 499, 510 (1948);

3 In Flavio v. McKenzie, 177 Cal.App.2d 274 (1960), the
4 court succinctly stated the principles applicable to granting a
5 preliminary injunction:

6 "It is well settled that the granting of a pre-
7 liminary injunction is addressed to the sound
8 discretion of the trial court, which is to be
9 exercised according to the circumstances of the
10 particular case (Kendall v. Foulks, 180 Cal. 171
11 [179 P.886]); and its action upon such applica-
12 tion will not be disturbed on appeal unless it
13 shall clearly appear that there was an abuse of
14 discretion. (Union Interchange, Inc. v. Savage,
15 52 Cal.2d 601 [342 P.2d 249]; Fresno Canal etc.
16 Co. v. People's Ditch Co., 174 Cal. 441 [163 P.
17 497].) It is also the rule that the discretion
18 should be exercised in favor of the party most
19 likely to be injured. (McCoy v. Matich, 128 Cal.
20 App.2d 50 [274 P.2d 714].) . . . [I]t is not nec-
21 essary on the question of issuing an injunction
22 pendente lite to determine the ultimate rights
23 of the parties. . . . The purpose of a preliminary
24 injunction is to preserve the status quo until the
25 merits of the action can be determined. (Harbor
26 Chevrolet Corp. v. Machinist Local Union 1484, 173
27 Cal.App.2d 380 [343 P.2d 640].)" 177 Cal.App.2d
28 at 278-79.

19 A court may properly enjoin activities that unreason-
20 ably interfere with the use of private property by the owner
21 thereof and those with whom the owner does business.

22 San Diego Gas & Electric Co. v. San Diego
23 Congress of Racial Equality,
24 241 Cal.App.2d 405 (1966);

25 Chrisman v. Culinary Workers' Local No. 62,
26 46 Cal.App.2d 129 (1941).

26 As set forth in the complaint and in the accompanying
27 declarations, the faculty, staff and students of Stanford Univer-
28 sity were unable to use fully the facilities in the Applied
29 Electronics Laboratory and to discharge effectively their duties
30 therein during the period of its occupancy by defendants. Like-

1 wise, the administrative staff of Stanford University is
2 presently unable to use the facilities of Encina Hall for
3 the administration of the University because of the damage
4 thereto caused by the forced entry into the building, the
5 rummaging into files and the overturning of office machinery
6 and like property. Moreover, the threat of the repetition
7 of such actions by defendants interferes with the normal use
8 of such facilities. Defendants' actions are therefore
9 obstructing plaintiff's free use of its property and interfering
10 with plaintiff's enjoyment of such property and therefore
11 constitute a nuisance.

12 Civil Code, Section 3479.

13 The nuisance created by defendants has injuriously
14 affected plaintiff's property rights, and plaintiff is clearly
15 entitled to an order enjoining the nuisance.

16 Code of Civil Procedure, Section 731.

17 The defendants have threatened to reoccupy the
18 Applied Electronics Laboratory and Encina Hall and to occupy
19 other University buildings until certain research on the
20 Stanford Campus and at Stanford Research Institute is terminated.
21 To permit defendants to occupy University buildings during the
22 period that this action is being litigated to final judgment
23 would result in irreparable and certain injury to the property
24 rights of the Board of Trustees. On the other hand, it would
25 not injure the defendants to restrain or enjoin their
26 threatened trespassing, for they are permitted to demonstrate
27 in accordance with the University rules and regulations.

28 We submit, therefore, that under the circumstances
29 here presented the trial court should grant a temporary
30 restraining order and preliminary injunction to prevent the

1 threatened trespass by defendants, to abate the nuisance
2 and to maintain the status quo during the pendency of this
3 action.

4 Dated: May 1, 1969.

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6 Respectfully submitted,

7 McCUTCHEM, DOYLE, BROWN & ENERSEN

8 By William W Schwarzer
9 William W Schwarzer

10 Attorneys for The Board of Trustees
11 of The Leland Stanford Junior
12 University.

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