

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TEXAS PACIFIC LAND TRUST and, solely in their respective capacities as trustees for Texas Pacific Land Trust, DAVID E. BARRY and JOHN R. NORRIS III,

Plaintiffs,

v.

ERIC L. OLIVER,

Defendant.

and

ERIC L. OLIVER, SOFTVEST, L.P., HORIZON KINETICS LLC, and ART-FGT FAMILY PARTNERS LIMITED,

Counterclaim Plaintiffs,

v.

DAVID E. BARRY and JOHN A. NORRIS III, in their individual capacities and in their capacities as trustees for the Texas Pacific Land Trust,

Counterclaim Defendants.

Case No. 3:19-CV-01224-B

**COUNTERCLAIM PLAINTIFFS' MOTION FOR A DECLARATORY
JUDGMENT AND PRELIMINARY INJUNCTION**

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Attorneys for Counterclaim Plaintiffs Eric L. Oliver, SoftVest, L.P., Horizon Kinetics LLC, and ART-FGT Family Partners Limited

June 25, 2019

Counterclaim Plaintiffs respectfully move for entry of a declaratory judgment that:

1. Texas Pacific Land Trust (“TPL”) was required to hold a special meeting of shareholders to elect a successor trustee after one its trustees resigned in February 2019;
2. Counterclaim Defendants David E. Barry and John A. Norris had no authority to unilaterally and indefinitely postpone the special meeting of shareholders that TPL had noticed for May 22, 2019;
3. Counterclaim Defendants have no authority to “disqualify” Counterclaim Plaintiff Eric L. Oliver from election as a TPL trustee;
4. The vote conducted at the May 22, 2019 special meeting of shareholders, with Counterclaim Defendants’ attorneys in attendance, was valid, and Mr. Oliver has been duly elected a TPL trustee; and
5. The vote conducted at a January 12, 2017 special meeting of shareholders was invalid and Mr. Barry has never been duly elected a TPL trustee.

Counterclaim Plaintiffs also respectfully move for the issuance of a preliminary injunction that:

1. Either (i) prohibits Counterclaim Defendants from taking any action on TPL’s behalf without Mr. Oliver’s participation as a fully empowered trustee; or (ii) prohibits Counterclaim Defendants from any further unauthorized postponement of the election by requiring the previously scheduled May 22, 2019 special meeting of shareholders be reconvened within five days of entry of the injunction to allow any additional votes to be cast and the official results be confirmed and announced by TPL via press release or securities filing; and
2. Prohibits Mr. Barry from directly or indirectly taking any action on TPL’s behalf until a new election can be held pursuant to the requirements of TPL’s Declaration of Trust.

As explained in the accompanying memorandum of law, the disputes between Incumbents and TPL's shareholders are ripe for swift resolution by declaratory judgment because the key facts underlying the disputes are uncontroverted. In addition, all four relevant factors weigh in favor of the issuance of interim injunctive relief: Counterclaim Plaintiffs are substantially likely to prevail on the merits; they and other TPL shareholders will suffer irreparable harm if the preliminary injunction does not issue; the balance of harm weighs in their favor; and issuance of preliminary injunction will serve the public interest.

Accordingly, Counterclaim Plaintiffs respectfully request that the Court (i) enter a declaratory judgment to restore and confirm TPL shareholders' right; and (ii) grant a preliminary injunction to prevent any further abrogation of TPL shareholders' rights. A proposed order for entry is attached to this motion.

Dated: June 25, 2019

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Robert C. Walters

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CERTIFICATE OF CONFERENCE

On June 25, 2019, a conference was held between Robert Walters (counsel for the Counterclaim Plaintiffs) and Yvette Ostolaza (counsel for the Counterclaim Defendants). Agreement could not be reached at the conference because Counterclaim Defendants oppose the relief sought by this motion.

/s/ Robert C. Walters
Robert C. Walters

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2019, a true and correct copy of the foregoing document was served through the Court's CM/ECF System on all counsel of record.

/s/ Robert C. Walters
Robert C. Walters

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TEXAS PACIFIC LAND TRUST and, solely in their
respective capacities as trustees for Texas Pacific Land
Trust, DAVID E. BARRY and JOHN R. NORRIS III,

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ERIC L. OLIVER, SOFTVEST, L.P., HORIZON
KINETICS LLC, and ART-FGT FAMILY PARTNERS
LIMITED,

Counterclaim Plaintiffs,

v.

DAVID E. BARRY and JOHN A. NORRIS III, in their
individual capacities and in their capacities as trustees for
the Texas Pacific Land Trust,

Counterclaim Defendants.

Case No. 3:19-CV-01224-B

**[PROPOSED] ORDER GRANTING COUNTERCLAIM PLAINTIFFS’
MOTION FOR A DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION**

Before the Court is the motion of Counterclaim Plaintiffs Eric Oliver, SoftVest, L.P., Horizon Kinetics LLC and Art-FGT Family Partners Limited for a declaratory judgment and preliminary injunction (the “Motion”). Having considered the Counterclaim Plaintiffs’ Motion, the arguments of the parties, and the submitted evidence, the Court finds that the Counterclaim Plaintiffs’ Motion is well taken and should be and hereby is GRANTED.

Declaratory Judgment

The Court hereby declares the follow:

1. Texas Pacific Land Trust (“TPL”) was required to hold a special meeting of shareholders to elect a successor trustee after one its trustees resigned in February 2019;
2. Counterclaim Defendants David E. Barry and John A. Norris had no authority to unilaterally and indefinitely postpone the special meeting of shareholders that TPL had noticed for May 22, 2019;
3. Counterclaim Defendants have no authority to “disqualify” Mr. Oliver from election as a TPL trustee;
4. The vote conducted at the May 22, 2019 special meeting of shareholders, with Counterclaim Defendants’ attorneys in attendance, was valid, and Mr. Oliver has been duly elected at TPL trustee; and
5. The vote conducted at a January 12, 2017 special meeting of shareholders was invalid and Mr. Barry has never been duly elected a TPL trustee.

May 2019 Election

Pursuant to Federal Rule of Civil Procedure 65(d)(1)(A), the Court states that it is granting Counterclaim Plaintiffs’ Motion and issuing a preliminary injunction for the following reasons and based on the following findings.

1. The Court finds that Counterclaim Plaintiffs are substantially likely to prevail on the merits of their claims against Counterclaim Defendants David E. Barry and John A. Norris (“Incumbents”) for breaches of TPL’s governing document, its Declaration of Trust, and breaches of fiduciary duties to TPL shareholders in relation to the May 2019 election, as well as their claims for declaratory judgment that TPL was required to hold a special meeting of

shareholders to elect a successor trustee after one its trustees resigned in February 2019; Incumbents had no authority to unilaterally and indefinitely postpone the special meeting of shareholders that TPL had noticed for May 22, 2019; Incumbents have no authority to “disqualify” Mr. Oliver from election as a TPL trustee; and the vote conducted at the May 22, 2019 special meeting of shareholders, with Counterclaim Defendants’ attorneys in attendance, was valid, and Mr. Oliver has been duly elected at TPL trustee.

2. The Court finds Counterclaim Plaintiffs and other TPL shareholders will suffer irreparable harm if the preliminary injunction does not issue. By purporting to indefinitely postpone the special meeting of shareholders that TPL had noticed for May 22, 2019, and refusing to recognize the election of Mr. Oliver as a trustee, Incumbents have effectively disenfranchised Counterclaim Plaintiffs and other TPL shareholders. The right of shareholders to vote for the trustees of a business trust is one of the most important rights arising from stock ownership, and the harm inflicted by Incumbents’ actions are irreparable because it cannot be undone or quantified or remedied with money damages.

3. The Court finds that the harm Counterclaim Plaintiffs and other TPL shareholders will suffer if the preliminary injunction does not issue far outweighs any harm the Incumbents will suffer if the order does issue. Any theoretical harm to the Incumbents that would result from recognizing Mr. Oliver as a duly-elected trustee is mitigated by the fact that Mr. Oliver will only be able to assert influence over TPL’s affairs equal to each of the individual Incumbents. Whereas, without the issuance of a preliminary injunction, the Incumbents—in direct contradiction of their fiduciary duties, the Declaration of Trust, and the will of TPL’s shareholders—will be permitted to exercise exclusive control over the management of TPL,

which will inflict considerable—and irreparable—harm upon Counterclaim Plaintiffs and other TPL shareholders.

4. The Court finds that issuance of a preliminary injunction will serve the public interest of corporate democracy and shareholder participation in the management of TPL. Moreover, a preliminary injunction will deprive Incumbents the exclusive control of TPL that they are seeking through their misconduct, thereby furthering the public interest in better business ethics by depriving wrongdoers of the benefit of their wrongdoing.

Accordingly, the Court ORDERS that the Incumbents are prohibited from taking any action on TPL's behalf without Mr. Oliver's participation as a fully empowered trustee.

In the alternative, pursuant to Federal Rule of Civil Procedure 65(d)(1)(A), the Court states that it is granting Counterclaim Plaintiffs' Motion and issuing a preliminary injunction for the following reasons and based on the following findings.

1. The Court finds that Counterclaim Plaintiffs are substantially likely to prevail on the merits of their claims against Incumbents for breaches of TPL's governing document, its Declaration of Trust, and breaches of fiduciary duties to TPL shareholders in relation to the May 2019 election, as well as their claims for declaratory judgment that TPL was required to hold a special meeting of shareholders to elect a successor trustee after one its trustees resigned in February 2019; Incumbents had no authority to unilaterally and indefinitely postpone the special meeting of shareholders that TPL had noticed for May 22, 2019; and Incumbents have no authority to "disqualify" Mr. Oliver from election as a TPL trustee.

2. The Court finds Counterclaim Plaintiffs and other TPL shareholders will suffer irreparable harm if the preliminary injunction does not issue. By purporting to indefinitely postpone the special meeting of shareholders that TPL had noticed for May 22, 2019, and

refusing to recognize the election of Mr. Oliver as a trustee, Incumbents have effectively disenfranchised Counterclaim Plaintiffs and other TPL shareholders. The right of shareholders to vote for the trustees of a business trust is one of the most important rights arising from stock ownership, and the harm inflicted by Incumbents' actions are irreparable because it cannot be undone or quantified or remedied with money damages.

3. The Court finds that the harm Counterclaim Plaintiffs and other TPL shareholders will suffer if the preliminary injunction does not issue far outweighs any harm the Incumbents will suffer if the order does issue. Any theoretical harm to the Incumbents that would result from recognizing Mr. Oliver as a duly-elected trustee is mitigated by the fact that Mr. Oliver will only be able to assert influence over TPL's affairs equal to each of the individual Incumbents.

Whereas, without the issuance of a preliminary injunction, the Incumbents—in direct contradiction of their fiduciary duties, the Declaration of Trust, and the will of TPL's shareholders—will be permitted to exercise exclusive control over the management of TPL, which will inflict considerable—and irreparable—harm upon Counterclaim Plaintiffs and other TPL shareholders.

4. The Court finds that issuance of a preliminary injunction will serve the public interest of corporate democracy and shareholder participation in the management of TPL. Moreover, a preliminary injunction will deprive Incumbents the exclusive control that they are seeking through their misconduct, thereby furthering the public interest in better business ethics by depriving wrongdoers of the benefit of their wrongdoing.

Accordingly, the Court ORDERS that the Incumbents are prohibited from any further unauthorized postponement of the election by requiring the previously scheduled May 22, 2019 special meeting of shareholders be reconvened within five days of entry of the injunction to

allow any additional votes to be cast and the official results be confirmed and announced by TPL via press release or securities filing.

January 2017 Election

Pursuant to Federal Rule of Civil Procedure 65(d)(1)(A), the Court states that it is granting the Investor Group's motion and issuing a preliminary injunction for the following reasons and based on the following findings.

1. The Court finds that Counterclaim Plaintiffs are substantially likely to prevail on the merits of their claim that the vote conducted at the January 12, 2017 shareholder meeting was invalid and ineffective and that Mr. Barry has never been duly elected a TPL trustee.

2. The Court finds that Counterclaim Plaintiffs and other TPL shareholders will suffer irreparable harm if the preliminary injunction does not issue. By allowing Mr. Barry to exercise the rights and duties of a trustee despite not having been elected pursuant to the requirements of the Declaration of Trust and applicable rules of the New York Stock Exchange, will Counterclaim Plaintiffs and other TPL shareholders have effectively been disenfranchised. The right of shareholders to vote for the trustees of a business trust is one of the most important rights arising from stock ownership, and the harm inflicted by Incumbents' actions are irreparable because it cannot be undone or quantified or remedied with money damages.

3. The Court finds that the harm Counterclaim Plaintiffs and other TPL shareholders will suffer if the preliminary injunction does not issue far outweighs any harm the Incumbents will suffer if the order does issue. Any theoretical harm to the Incumbents that would result from adhering to the Declaration of Trust's clear requirement that a trustee must receive the votes of a majority of the "certificate holders present in person or by proxy" at a special meeting and counting only those votes that are lawfully cast for Mr. Barry, is outweighed by the harm that

will be imposed upon Counterclaim Plaintiffs and other TPL shareholders if Mr. Barry is permitted to continue to act as a trustee despite his lack of legal authority to do so.

4. The Court finds that issuance of a preliminary injunction will serve the public interest of corporate democracy and shareholder participation in the management of TPL. Moreover, a preliminary injunction will deprive Incumbents of the exclusive control of TPL secured in violation of the Declaration of Trust, their fiduciary duties to shareholders, and the rules of the New York Stock Exchange, thereby furthering the public interest in better business ethics by depriving wrongdoers of the benefit of their wrongdoing.

Accordingly, the Court ORDERS that Mr. Barry is hereby prohibited from directly or indirectly taking any action on TPL's behalf until a new election can be held pursuant to the requirements of TPL's Declaration of Trust and in accordance with the rules of the New York Stock Exchange.

* * *

Pursuant to Federal Rule of Civil Procedure 65(c), the Court orders Counterclaim Plaintiffs to give security in the amount of _____ by paying that amount into the registry of the Court no later than 48 hours after the issuance of this order.

The Court issues this declaratory judgment and preliminary injunction and with and on notice to all parties. The Court issues this declaratory judgment and preliminary injunction during the _____ hour of the _____ day of _____, 2019.

SO ORDERED

Hon. Jane J. Boyle
United States District Judge