IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

| | | |
|---|---|---|
| SERVICE CORPORATION OF WESTOVER HILLS, | ) | |
| Plaintiff, | ) | |
| v. | ) | Civil Action No. 2922-VCP |
| ROBERT GUZZETTA and KATHLEEN S. GUZZETTA, | ) | |
| Defendants. | ) | |

**MEMORANDUM OPINION**

Submitted: April 8, 2011
Decided: July 21, 2011

Richard H. Cross, Jr., Esq., CROSS & SIMON, LLC, Wilmington, Delaware; *Attorneys for Plaintiff*

Thomas C. Marconi, Esq., LOSCO & MARCONI, P.A., Wilmington, Delaware; *Attorneys for Defendants*

**PARSONS, Vice Chancellor.**

This dispute arises from a preliminary injunction preventing Defendants, Robert and Kathleen Guzzetta (the "Guzzettas"), from demolishing a house on property they purchased in the Westover Hills Section C housing development ("Westover Hills") and converting it to a grassy play area for their children. Ultimately, however, the Court denied a permanent injunction. The Court also awarded the Guzzettas damages in the full amount of the accompanying injunction bond, which was $10,000.

The Guzzettas appealed the amount of the bond and the related damages award. The Supreme Court reversed the award of $10,000 in damages based largely on its conclusion that this Court had not adequately explained its decision to limit the preliminary injunction bond to $10,000.[1]

This matter is before me on remand for further action in accordance with the Supreme Court's decision. After careful consideration of the parties' arguments, briefs, and supporting submissions, and for the reasons stated in this Memorandum Opinion, I have decided to set the injunction bond at $26,353 and, if necessary, to hold an evidentiary hearing promptly to determine the Guzzettas' damages.

## I. BACKGROUND

### A. The Parties

Plaintiff, Service Corporation of Westover Hills ("Service Corp."), is a Delaware not-for-profit corporation consisting of the landowners within Westover Hills.

[1] *Guzzetta v. Serv. Corp. of Westover Hills*, 7 A.3d 467, 471 (Del. 2010).

The Guzzettas are homeowners in Westover Hills and have lived at 905 Berkeley Road since 1996. In 2007, they purchased the adjacent, disputed property at 924 Stuart Road (the "Property").[2]

## B. Facts[3]

Properties in Westover Hills are subject to restrictive covenants ("the Covenants"). Arguably due to such restrictions and regulation by Service Corp., the development currently is populated by stately houses with similar styling and mature landscaping. The Covenants are enforceable by Service Corp. via assignment from the Delaware Land Development Corporation.

In early 2007, Service Corp. discovered that the then-owners of the Property, William and Kathleen Rubbert (the "Rubberts"), sought to sell their property to the Guzzettas, who wanted to demolish the structure thereon in order to extend their yard and create a grass field on which their children could play. Service Corp. expressed concern that such a field would be out of character with the neighborhood and sought to use its powers under the covenants to block any demolition by filing a complaint for injunctive

---

[2] This property was identified in the Complaint as 924 Stuart Road, but subsequently was renamed 907 Berkeley Road. Docket Item ("D.I.") 36, Pl.'s Op. Br. in Supp. of Prelim. Inj., at 5.

[3] For the sake of brevity, I recite only the facts and background relevant to the current disputes regarding the bond and damages. For a full account of the facts of this case, see *Serv. Corp. of Westover Hills v. Guzzetta*, 2009 WL 5214876, at *1-3 (Del. Ch. Dec. 22, 2009).

relief on April 26, 2007 (the "Complaint"). Nonetheless, the Rubberts sold the Property to the Guzzettas on May 1, 2007.[4]

### C. Procedural History

In its Complaint, Service Corp. sought a preliminary and permanent injunction preventing the Rubberts from destroying the improvements on the Property. In connection with the sale of the Property, Plaintiff amended the Complaint to substitute the Guzzettas for the Rubberts as Defendants. On May 3, 2007, I held a hearing on Plaintiff's Motion for a Temporary Restraining Order ("TRO") and soon after granted a TRO.

#### 1. The TRO and Order for Giving of Security by Plaintiff

After the issuance of the TRO, the Guzzettas moved, pursuant to Court of Chancery Rule 65(c),[5] for an order for the giving of security by Plaintiff (the "Bond Motion").[6] The Guzzettas requested that the security be set in the amount of $10,189.56 to cover increased demolition costs,[7] as well as additional property and school taxes assessed upon the improvements on the Property for the 2007-08 tax year.[8]

---

4 D.I. 16, Defs.' Mot. to Intervene, ¶ 1.

5 This Rule states: "No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Ct. Ch. R. 65(c).

6 D.I. 23, Defs.' Mot. for an Order for the Giving of Security by Pl.

7 Defendants presented a letter from their demolition contractors, Rosauri Builders & Remodelers Inc. ("Rosauri"), notifying them of the revocation of a previously

On May 24, 2007, I bifurcated the action such that any matters relating to trial were referred to Court of Chancery Master Ayvazian, while I continued to preside over matters relating to the form of the TRO and any preliminary injunctive relief.[9] On May 29, I required a secured bond in the amount of $5,000 and extended the TRO.[10] On June 15, 2007, after a hearing on Plaintiff's motion for preliminary injunction, I granted a preliminary injunction prohibiting the Guzzettas from "demolishing the house located at 907 Berkeley Road" or "cutting down any trees on that property without approval of Plaintiff or further Court ruling allowing such demolition or cutting to occur."[11]

**2. Defendants' Petition to Increase Security**

On September 22, 2008, Defendants filed a Petition to Increase Security Given by Plaintiff (the "Motion to Increase the Bond"). In addition to the costs claimed in their initial Bond Motion, the Guzzettas sought a bond sufficient to cover increased costs related to: landscaping and tree removal services; arborist services; school and property taxes for the 2008-09 tax year; sewer rents for the 2008 tax year; insurance premiums; Service Corp. dwelling test charges; time off from work; yellow caution tape; and interest

---

offered $6,500 discount and the addition of a $1,500 fuel surcharge to their previous estimate. *Id.* Ex. A.

8 Bond Mot. ¶ 9.

9 Master Ayvazian conducted a trial on October 30, 2007 and issued her Final Report on April 24, 2009, finding that Service Corp. was not entitled to a permanent injunction. D.I. 95, *Serv. Corp. of Westover Hills v. Guzzetta*, No. 2922-VCP (Del. Ch. Apr. 24, 2009) ("Master's Report").

10 D.I. 29, Order granting TRO, at 1-2.

11 D.I. 44, Order granting prelim. inj., at 1.

on damages.[12] Including the potential damages they previously identified, the Guzzettas sought to raise the injunction bond to a total of $79,146.94.[13]

On October 30, 2008, I increased the amount of the secured bond to $10,000 based on the Guzzettas' claims that they would suffer potential damages based on, among other things, higher taxes and insurance costs and lost use of the Property.[14] I rejected Defendants' remaining estimated damages for various reasons, including: an insufficient showing of proximate cause as to the costs related to landscaping and arborist services, the absence of a legal foundation for the claimed costs relating to time spent responding to litigation, and a failure to show out-of-pocket damages that might support Defendants' claims for interest on damages.[15] The Guzzettas then moved for reargument as to the amount of the bond. I denied that motion on December 22, 2008, primarily on the ground that they failed to provide a legal theory that would support awarding them lost wages for time spent responding to the litigation.

### 3. Court of Chancery denies Permanent Injunction

On September 24, 2009, I heard oral argument on the objections to the Master's Report denying Service Corp.'s request for a permanent injunction. On December 22, 2009, I issued my opinion concurring with the Master's Final Report and finding that

---

12 D.I. 77, Defs.' Pet. to Increase Security Given by Pl., Ex. A.

13 *Id.*

14 I discounted certain of Defendants' estimated damages, however. I reduced their estimate for lost use of property, for example, because it appeared to be overstated and not fully supported. D.I. 89, Order increasing security, at 2.

15 *Id.*

Plaintiff was not entitled to a permanent injunction.[16] Shortly thereafter, I entered a judgment awarding damages of $10,000 to Defendants for having been wrongfully enjoined, as well as attorneys' fees and costs of $60,000, under 10 *Del. C.* § 348. The Guzzettas then appealed to the Delaware Supreme Court, but only as to that portion of the Judgment that limited the damage award to $10,000.[17]

### 4. Delaware Supreme Court Reversal

On November 9, 2010, the Delaware Supreme Court reversed this Court's award of damages and remanded this matter for further action in accordance with its decision.[18] It found that while this Court properly had excluded claims for damages related to landscaping and arborist services, time spent litigating the matter,[19] and interest on damages, it failed to provide a satisfactory explanation for raising the bond from $5,000 to only $10,000. In that regard, the Supreme Court observed that the Guzzettas had estimated that they would suffer more than $27,000 in damages that this Court had not excluded.[20]

---

16 *Serv. Corp. of Westover Hills v. Guzzetta*, 2009 WL 5214876, at *11 (Del. Ch. Dec. 22, 2009).

17 D.I. 108, Defs.' Notice of Appeal to Del. Sup. Ct., at 1.

18 *Guzzetta*, 7 A.3d at 469, 471.

19 The Supreme Court stated that *Emerald P'rs v. Berlin*, 1998 WL 474195 (Del. Ch. Aug. 3, 1998), was inapposite on this issue because "there was nothing that the Guzzettas had to do but wait for the injunction to be lifted." *Guzzetta*, 7 A.3d at 471.

20 *Id.* at 470.

This Memorandum Opinion constitutes my rulings on remand from the Supreme Court as to the appropriate amount of the bond and the resultant limit on Defendants' damages.

### D. Parties' Contentions

The parties disagree as to the import of the Supreme Court's instructions on remand. In particular, they dispute the extent of the factual record that this Court may consult in setting the amount of the injunction bond, the proper bond amount, and the amount of damages this Court ultimately should award. Only the first two of these issues are currently before me.

Defendants argue that the injunction bond should be set at $93,351.32 and that Service Corp., therefore, should pay additional damages, beyond the $10,000 it already paid, of $83,351.32 plus interest. Specifically, the Guzzettas assert that this Court should reevaluate the amount of the injunction bond *de novo*, keeping in mind that the purpose of Rule 65(c) is to *fully* protect the enjoined party.[21] The Guzzettas assert that because "an enjoined party's damages are not fully ascertainable until [a] court vacates the injunction," this Court should not limit its reevaluation to evidence presented in connection with Defendants' original Bond Motion and later Motion to Increase the Bond.[22] Instead, the Guzzettas urge the Court to set the bond liberally at a level likely to

---

[21] *Id.* at 469 (emphasis added); *Pargas, Inc. v. Empire Gas Corp.*, 423 F. Supp. 199, 243 (D. Md. 1976).

[22] D.I. 132, Defs.' Op. Br. Addressing Defs.' Damages Claims ("DOB"), at 5-6 (quoting *Guzzetta*, 7 A.3d at 470).

*meet or exceed* a reasonable estimate of potential damages, "erring on the high side."[23] Therefore, according to the Guzzettas, the injunction bond should be set at $93,351.32 so as to reflect *all* of their potential Rule 65(c) damages from the time of the TRO in May 2007 through January 2010, when the preliminary injunction was lifted.

Defendants also seek actual damages in an amount equal to the total bond they have requested, $93,351.32. In that regard, they argue that all of the damages included in Exhibit A to their opening brief on remand are causally and exclusively related to the existence of the injunction.[24]

Service Corp. urges the Court to set the injunction bond at the same level it did previously, *i.e.*, $10,000, and contends that it should not be required to pay any damages beyond the $10,000 it already has paid. Alternatively, Service Corp. argues that the maximum amount the bond can be is $27,953.69, which is the sum of all the items it requested in its Motion to Increase the Bond minus the categories this Court explicitly excluded.[25] According to Service Corp., this Court may consider only the evidence presented in support of Defendants' Bond Motion and the later Motion to Increase the

---

23 *Id.*

24 DOB 7.

25 Plaintiff calculates this figure by subtracting the rejected categories of damages this Court and the Supreme Court held were not compensable from the total amount of damages Defendants sought in their Motion to Increase the Bond. ($79,146.94 - $51,193.25 = $27,953.69). D.I. 133, Pl.'s Op. Br. on Damages, at 8 n.35.

Bond because the Supreme Court's Mandate only instructs the Court to explain on remand why it increased the bond from $5,000 to $10,000 *and not higher*.

Service Corp. further argues that, regardless of the bond amount, this Court should affirm its damages award of $10,000. Service Corp. asserts that the Guzzettas have provided only four pages of support for their claims of $93,351.32 and most of their estimated damages lack a legal foundation for recovery or any evidentiary support.[26] Thus, Plaintiff requests that the Court either limit any damages award to the $10,000 it already has paid or require an evidentiary hearing or other proof that the Guzzettas actually incurred their claimed damages and that those damages are reasonable.

## II. ANALYSIS

### A. Standard for Setting an Injunction Bond

In any action to enjoin or restrain a party, Rule 65(c) requires that an applicant give security for the payment of "such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."[27] Under this Rule, trial courts have discretion to set the amount of security, which, as here, can be given in the form of a bond.[28] Because the amount of an injunction bond typically is set at a relatively early stage in any given case, a determination of the amount of security

---

[26] In its opinion remanding this case, the Supreme Court stated that: "The party seeking an injunction bond must support its application with 'facts of record or . . . some realistic as opposed to a yet-unproven legal theory from which damages could flow to the party enjoined.'" *Guzzetta*, 7 A.3d at 470 (quoting *Petty v. Penntech Papers, Inc.*, 1975 WL 7481 at *1 (Del. Ch. Sept. 24, 1975)).

[27] Ct. Ch. R. 65(c).

[28] *See, e.g.*, *Pargas*, 423 F. Supp. at 243.

adequate to protect the enjoined party is inherently an estimate.[29] Therefore, in exercising its discretion, a trial court must consider both the purpose of the security, which is to protect a wrongfully enjoined party from injunction-related damages,[30] and the need for estimated damages to be credible[31] or, in other words, based on factual evidence and plausible legal theories.[32] Generally, courts should "err on the high side" by setting the bond at a level likely to meet or exceed a reasonable estimate of potential damages,[33] as an enjoined party may only recover damages up to the amount of the injunction bond.[34]

---

29 *Id.* ("the amount of security adequate for a defendant's protection is a matter of estimate in light of the circumstances of the case . . . ."); *Int'l Ladies' Garment Workers' Union (ILGWU) v. Donnelly Garment Co.*, 147 F.2d 246, 252-53 (8th Cir. 1945) ("Necessarily, at the beginning of an action, the amount of security adequate for a defendant's protection is a matter of estimate.").

30 *Guzzetta*, 7 A.3d at 471.

31 *Id.* ("the trial court could conduct an evidentiary hearing to satisfy itself that there is a *credible basis* for the estimated damages.") (emphasis added).

32 *Id.* at 470 (quoting *Petty*, 1975 WL 7481, at *1).

33 *Id.*; *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883, 888 (7th Cir. 2000), *amended on denial of reh'g*, 209 F.3d 1032, *cert. denied*, 531 U.S. 917 (2000).

34 *Guzzetta*, 7 A.3d at 469; *ILGWU*, 147 F.2d at 253 ("the defendants could not recover on any bond an amount in excess of the penalty of the bond nor for any liability except that stipulated in the bond.").

Indeed, one court observed that a party may be irreparably harmed if the court sets the bond limit far lower than the enjoined party's actual damages. *Mead*, 201 F.3d at 888 ("Unfortunately an error in the other direction produces irreparable injury, because the damages for an erroneous preliminary injunction cannot exceed the amount of the bond.").

The prescribed security, however, is intended to cover only those "costs and damages directly sustained as the result of an improvident issuance of the restraining order or preliminary injunction."[35] Thus, while Rule 65(c) does not require "the certainty of harm," it does seek to cover damages that may be incurred or suffered due to wrongful enjoinment.[36]

### B. The Amount of the Injunction Bond

The Supreme Court remanded this action for further action in accordance with its decision reversing the award of damages in the full amount of the injunction bond ($10,000). It did so based on its determination that this Court had not explained its rationale for setting the amount of the bond well below the Guzzettas' unexcluded, estimated damages, which did not appear to be unreasonable.[37] The parties dispute whether this means that the Court is to reevaluate the amount of the bond based on the record presented in support of the Guzzettas' September 22, 2008 Motion to Increase the Bond or on the basis of the Guzzettas' current claim for damages. Therefore, I first address that issue and then turn to the question of the appropriate amount of the bond.

---

35 *Pargas*, 423 F. Supp. at 244 (internal quotations omitted) (quoting 7 JAMES WM MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 65.09 (2d ed. 1975)). The language of Court of Chancery Rule 65(c) is virtually identical to that in Fed. R. Civ. P. 65(c).

36 *Interlink Int'l Fin. Servs., Inc. v. Block*, 145 F. Supp. 2d 312, 318 (S.D.N.Y. 2001).

37 *Guzzetta*, 7 A.3d at 471.

### 1. The record to be considered on remand as to the bond amount

Service Corp. argues that the Court should reevaluate its ruling as to the amount of the bond based solely on the estimated damages presented to it in 2008 in connection with the Guzzettas' Motion to Increase the Bond. It further contends that, as a result, the upper limit for the bond is $27,953.69 because that is the total amount of the damages Defendants claimed in 2008 that were not excluded by this Court. By contrast, the Guzzettas assert that the Supreme Court did not intend this Court to "limit the bond and the damages claim to the October 2008 level . . . ."[38] Thus, the Guzzettas urge the Court to reassess the amount of the bond based on the evidence of damages they recently presented for the period from May 2007, when the TRO was entered, until slightly after January 2010, when the preliminary injunction was vacated.

Having carefully reviewed the Supreme Court's opinion and the submissions of the parties, I conclude that Service Corp. is generally correct. The Supreme Court remanded this matter for further proceedings regarding the amount of the bond and, then, the amount of damages to which the Guzzettas are entitled. The parties do not dispute the "injunction bond rule"—*i.e.*, that the maximum damages a party may obtain for a wrongful injunction is the amount of the injunction bond. The only issue on appeal was whether the trial court abused its discretion in setting the amount of the bond. In holding that an error had been committed, the Supreme Court stated:

> If necessary, the trial court could conduct an evidentiary hearing to satisfy itself that there is some credible basis for

[38] D.I. 136, Defs.' Reply Br. Addressing Defs.' Damages Claim ("DRB"), at 1.

> the estimated damages. Having done so, a proper exercise of discretion would then require that the court explain its rationale for setting a bond at an amount well below the enjoined party's credible estimate of potential damages. The trial court did not provide such an explanation, and it does not appear from the record that the Guzzettas' remaining estimated damages are unreasonable.[39]

I read the Supreme Court's opinion as requiring this Court to reexamine the estimated damages presented in 2008 in light of the appellate decision, redetermine the appropriate amount of the bond, and explain the rationale for its decision. Thus, the relevant record is that which the Guzzettas presented in 2008.

In arguing for consideration of their current damages numbers, the Guzzettas conflate the setting of an injunction bond with the determination of damages. Their proposed approach is understandable based on the unusual procedural posture of this case, but it is not persuasive. Defendants cited no authority in support of their position. Furthermore, in cases involving the equivalent federal rule, Fed. R. Civ. P. 65(c), courts have denied *any* retroactive increase of injunction bonds.[40] The Seventh Circuit, for instance, has held that "there is neither logical nor legal room for a post-reversal increase in an injunction bond."[41] Here, allowing the Guzzettas to expand the record on remand would unfairly expose Plaintiff to greater liability than Defendants' Motion to Increase

---

39 *Guzzetta*, 7 A.3d at 471.

40 *See Sprint Commc'ns Co. v. CAT Commc'ns Int'l, Inc.*, 335 F.3d 235, 241 (3d Cir. 2003) ("Because the bond limits liability at the amount posted when the applicant accepted the preliminary injunction, the District Court erred in ordering a retroactive increase.").

41 *Mead Johnson & Co. v. Abbott Labs.*, 209 F.3d 1032, 1034 (7th Cir. 2000).

the Bond could have supported. Because enjoined parties may recover only against the bond itself, it serves "generally to limit the applicant's liability and inform the applicant of the price of a wrongful injunction."[42] Thus, I have limited the relevant record on remand regarding the amount of the bond to the one created in connection with the Guzzettas' Motion to Increase the Bond.

I now turn to an examination of the estimated damages the Guzzettas presented in that context to determine the appropriate amount of the bond.

**2. Rejected damages**

The Guzzettas presented estimates of damages relating to landscaping and arborist services, time spent litigating this matter, and interest on damages in support of their Motion to Increase the Bond.[43] I explicitly rejected these costs in my Order increasing the bond to $10,000,[44] and the Supreme Court affirmed those rulings.[45]

For the same reasons, on remand, I decline to include any estimated damages in these categories in the new injunction bond amount.

---

42 *Sprint*, 335 F.3d at 240 n.5.

43 *See* Mot. to Increase the Bond Ex. A. The Guzzettas refer to these categories of damages again in their briefing on remand. DOB Ex. A.

44 Order increasing security, at 2.

45 *Guzzetta*, 7 A.3d at 470. In that regard, the Supreme Court expressly rejected Defendants' argument that *Emerald P'rs*, 1998 WL 474195, supported its estimated damages for time spent litigating. *Guzzetta*, 7 A.3d at 470.

### 3. Other categories of estimated damages

In support of their Motion to Increase the Bond, the Guzzettas identified several other items of estimated damages. After affirming the exclusion of the three items mentioned above, the Supreme Court observed that "it does not appear from the record that the Guzzettas' remaining estimated damages are unreasonable."[46] In addition, the Court stated that "in order to fully protect the enjoined party, the trial court should set the bond at a level likely to meet or exceed a reasonable estimate of potential damages" and should "err on the high side" in doing so.[47] With these statements in mind, I next examine, in turn, each of the other categories of estimated damages the Guzzettas advanced.

#### a. School and county taxes

The Guzzettas presented credible evidence of potential damages in terms of increased school and county taxes due to the presence of a house on the Property during the period they were enjoined from demolishing it and creating, instead, a grassy playfield for their children.

At the time of the Motion to Increase the Bond in September 2008, the Guzzettas claimed they had incurred $8,123.63 in additional New Castle County school and county property taxes (the "Taxes") as a result of the injunction.[48] By the time they moved to

---

46 *Id*. at 471.

47 *Id*. at 469, 470.

48 Due to the tax year calendar, the Guzzettas already had paid two years' worth of taxes by the time of their Motion. Each New Castle County tax year begins on July 1. Defendants were informed by the County that as long as the structure was

increase the bond, the Guzzettas had been enjoined from demolishing the improvements on the Property for approximately sixteen months. As of that time, Master Ayvazian had conducted a trial and rendered her Draft Report. The parties were in the midst of briefing various exceptions to that report pursuant to Court of Chancery Rule 144. Thereafter, the Master would need to consider those exceptions and issue her Final Report, after which the parties could file objections with this Court and litigate those issues before me. In these circumstances, I consider it reasonable to assume that it might have taken as much as another year for the Guzzettas to obtain a final ruling on the validity of the injunction. Consequently, I would expect Defendants' estimated potential damages to include Taxes for the 2009-2010 tax year, which would have accrued on July 1, 2009. Accordingly, I find that it is reasonable to include in the amount of the bond a total of $12,000 in estimated damages to account for three years of increased Taxes.

---

standing on the property on the first day of the 2007-08 tax year, it would be counted as an improvement in calculating property and school taxes due on the property for that year. In the Bond Motion, the Guzzettas alleged that the amount of the Taxes attributable to the structure alone was 77% and, therefore, $2,189.56 of the $2,843.58 paid in property and school taxes in the 2006-07 tax year would have been for the structure. Bond Mot. ¶ 9. In their Motion to Increase the Bond, the Guzzettas separately listed county and school taxes for each of the tax years 2007-08 and 2008-09 with a notation "higher annual taxes vs. lot." Mot. to Increase the Bond Ex. A. It is not clear whether the amounts listed represent the full amount of the tax charges of which only 77% would be attributable to the structure that the Guzzettas sought to demolish or just the increased taxes that would not have been due if the structure had been removed. The notation suggests the latter, so I have used those figures in determining the amount of the bond. If that is incorrect, Defendants' damages for Taxes would be limited to the increased amount due to the presence of the structure on the Property during the period of the injunction.

### b. Insurance

In support of their Motion to Increase the Bond, the Guzzettas alleged that they had paid premiums of $1,564 for Chubb Insurance on the improvements on the Property for the sixteen-month period from May 2007 to September 2008.[49] Assuming for the reasons discussed above that it might take another year for the Guzzettas to complete their challenge to the injunction, I estimate the potential insurance-related damages to be $2,737 (using the same average monthly rate of premium over a twenty-eight month period). Therefore, I also will include that amount in the bond.

### c. Lost use of the Property

Defendants estimated in their Motion to Increase the Bond that they would suffer damages of $8,500 due to their inability to use the Property as a playfield, as they intended, until the injunction was lifted. In my Order increasing the initial bond to $10,000, I stated that the Guzzettas' loss of use claim should be discounted because they had not presented any specific facts in support of it.[50] I am mindful, however, that the Supreme Court, referring generally to the damages items I had not specifically excluded, one of which was for the lost use of the Property, stated that those estimated damages did not appear unreasonable.

---

49 Insurance was required by the Guzzettas' mortgage company. DOB 5.

50 Order increasing security, at 2 ("the argument based on damages resulting from lost use of property appears overstated and lacks detailed factual support; therefore, the amount of those potential damages must be discounted.").

Therefore, applying the "credibility" standard referenced by the Supreme Court,[51] I find that the Guzzettas' estimate of $8,500 for lost use of the Property is overstated and lacks factual support. Based on the record available, I consider $5,000 or slightly over $2,000 per year to be a reasonable estimate of the potential loss to the Guzzettas caused by their inability to use the entire Property, as opposed to only the area around the existing structure, as a "play area" for their children during the enjoinment period. Thus, the bond will include $5,000 to account for that category of potential damages.

**d. Sewer rents and Service Corp. dwelling test charges**

Defendants also relied on several categories of potential damages in their Motion to Increase the Bond that neither this Court nor the Supreme Court addressed in any detail. Two of these categories are sewer rents and Service Corp. dwelling test charges. Specifically, the Guzzettas' Motion identified as indicative of potential damages a New Castle County sewer utility charge in 2008 of $92.07 and "6 mo. Dwelling test charges" from Service Corp. in 2007-08 of $450.00 and in 2008-09 of $666.00.[52]

The Guzzettas' estimates for these claimed damages appear credible and reasonable; often sewer charges as to improvements are assessed and these claimed figures do not seem to be unusually high. Because Service Corp. has not disputed these charges, I have no reason to question Defendants' inclusion of them in their estimates of

---

51 *Guzzetta v. Serv. Corp. of Westover Hills*, 7 A.3d 467, 471 (Del. 2010) ("If necessary, the trial court could conduct an evidentiary hearing to satisfy itself that there is some *credible* basis for the estimated damages.") (emphasis added).

52 Mot. to Increase Bond Ex. A.

potential damages. The record, however, does not indicate sufficient information about these two categories of charges to justify extrapolating them into the future. Therefore, I will include in the amount of the bond estimated damages of $100 for sewer charges and $1,116 for Service Corp. dwelling test charges.

**e. Increased demolition costs**

The Guzzettas alleged that they would suffer estimated damages of $8,000 as a result of increased costs for demolition by their contractors, Rosauri.[53] Defendants base this allegation on Exhibit A of the Bond Motion, a letter from Rosauri dated May 17, 2007 (the "Rosauri Letter"), indicating that a $6,500 discount Rosauri had offered would expire on May 30, 2007, [54] and adding a $1,500 fuel surcharge.[55]

The Rosauri Letter suggests that the Guzzettas obtained a favorable price for demolition of the structure on the Property in May 2007. They had purchased the Property on May 1, 2007, and this Court entered the TRO enjoining the demolition on May 3. Thus, the TRO precluded the Guzzettas from taking advantage of the discount. In addition, they arguably could have avoided the fuel surcharge if they had been able to proceed with the demolition before May 17, the date of the Rosauri Letter.

---

53 Bond Mot. Ex. A; Mot. to Increase Bond Ex. A.

54 Bond Mot. Ex. A ("[the] discount was offered . . . mainly due to our availability to start and complete the demolition of 924 Stuart Road in May of 2007.").

55 Rosauri advised the Guzzettas that the fuel surcharge resulted from an increase in fuel charges it had received in May 2007 from its "Haulers and Excavators." The letter also stated that it was a 5% surcharge, suggesting that the expected cost of the demolition would be in the range of $30,000. *Id*.

This evidence is credible, but it does not justify including the full $8,000 in estimated damages in the injunction bond. There is no reason to believe, for example, that the Guzzettas could not have obtained a relatively favorable demolition price in the future, if the injunction was vacated. Presumably, more than one company would have been capable of performing the demolition, and there is no evidence that Rosauri was the lowest bidder or an especially low cost provider. Moreover, October 30, 2008, the date I increased the bond, was at the height of the recent financial crisis. I consider it unlikely that market conditions in the following year or so would have supported high pricing by suppliers of demolition services. Similarly, it is difficult to predict whether a fuel surcharge would be applicable at a future date, when the Guzzettas might be able to proceed with the planned demolition.

In setting the amount of the injunction bond, I have taken all of these factors into consideration, as well as the Supreme Court's comment that the remaining estimated damages did not appear unreasonable and its instruction to err on the high side in setting the bond. Based on these factors, I have decided to include an additional $5,000 in the amount of the bond to account for the possibility that the Guzzettas might have had to pay more for the demolition after the injunction was lifted.[56]

---

[56] For similar reasons, I also have included in the new bond $400 attributable to the Guzzettas' assertion in connection with their Motion to Increase the Bond that they would incur increased costs of $550 for landscape removal. I discounted that amount for the same reasons as for the estimated increased charges for the demolition work.

I decline, however, to include any amount for the immaterial expenses related to the "yellow caution tape."

### 4. Summary of injunction bond reevaluation

In summary, for the reasons stated above, I am increasing the amount of the injunction bond to $26,353. The components of this amount are as follows:

| | |
|---|---|
| Taxes | $12,000 |
| Insurance | 2,737 |
| Lost use of the Property | 5,000 |
| Sewer rents | 100 |
| Service Corp. dwelling test charges | 1,116 |
| Increased demolition costs | 5,000 |
| Increased landscape removal costs | 400 |
| **TOTAL** | **$26,353** |

As stated in the Supreme Court's opinion, this amount represents the maximum amount the Guzzettas can recover as damages based on the Court's ultimate denial of permanent injunctive relief.

## C. Parties are entitled to an evidentiary hearing on damages

Where a court has wrongfully enjoined a defendant, there exists a rebuttable presumption that the defendant may recover damages suffered as a result.[57] Such a defendant is entitled to an evidentiary hearing to prove both the extent of her injuries and that the injunction proximately caused those injuries.[58] At the hearing, the defendant must prove her damages and causation by a preponderance of the evidence.[59]

---

57 *Emerald P'rs*, 1998 WL 474195, at *3.

58 *Id*.

59 *Id*.; *see also Pargas*, 423 F. Supp. at 244 ("the amount of damages which defendants can in any event recover for an inappropriately entered injunction must be shown to have been proximately caused by the injunction and may not be based upon speculation or conjecture.").

Here, the Court would hope that the parties might reach agreement on the amount of the Guzzettas' damages, subject to their respective abilities to preserve any rights to appeal from the rulings reflected in this Memorandum Opinion. If so, they may submit an appropriate proposed judgment consented to as to form. If no such agreement is reached, counsel promptly should contact the Court to schedule an evidentiary hearing on Defendants' actual damages. To date, neither party has submitted affidavits or other competent evidence that would support an immediate award of damages. At any hearing on damages, the Guzzettas would not be limited to presenting evidence related solely to the damage categories I considered here in setting the amount of the injunction bond. Rather, they can proffer evidence of any legally cognizable damages they actually suffered as a result of being enjoined, but the maximum amount they may recover is the amount of the bond.

## III. CONCLUSION

For the reasons stated in this Memorandum Opinion, the amount of the injunction bond entered on October 30, 2008, is increased to $26,353, with any later judgment for an award of damages above $10,000 to reflect a reduction of $10,000 to account for Plaintiff's prior payment.[60]

**IT IS SO ORDERED.**

---

[60] Service Corp. already has paid $10,000 in damages to the Guzzettas in accordance with this Court's earlier Judgment. S*ee* D.I. 107; DRB 6.