

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Click Properties, LLC and Hyper)
Formance, LLC,)
)
Plaintiffs,)
)
Vs.)
)
Thomas SC Properties, LLC and All-Tech)
Tire and Auto Repair, LLC,)
)
Defendants)
)

IN THE COURT OF COMMON PLEAS

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OCT 24 2022
SC Court of Appeals

ORDER

2020-CP-39-00266

This matter comes before the Court upon Plaintiff's Motion for a Temporary Injunction and Defendant's Motion to Dismiss. This Motion was heard on April 30, 2020 and was conducted pursuant to the Order of the S.C. Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended- hereinafter "Emergency Order"). The parties consented to holding the hearing via video conference with a Court Reporter.

The Motion for Temporary Injunction by the Plaintiff was filed on February 27, 2020 and served on the Defendant on March 2, 2020. The property in dispute is a gravel drive that runs along the western boundary of the Plaintiff's property and gravel turn-around area that is located at the rear of the Plaintiff's property and is adjacent to the Plaintiff's "back building" (the back building is used for Plaintiff's business- to shelter cars before and after they have been painted). The Plaintiff contends that this gravel drive and gravel turn-around area are the only means of vehicular access to the Plaintiff's back building. Plaintiff's use of this gravel drive and turn-around encroaches on Defendant's property, but Plaintiff and his predecessors have been using the property in this way for many years. Further, the continued use of the property is necessary for a major portion of the Plaintiff's business. To grant a temporary injunction, the applicant must

establish 3 factors: (1) irreparable harm; (2) likelihood of success on the merits; and, (3) no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The Court addresses these issues as follows: (1) Based on the Plaintiff's affidavit, the failure to grant this injunction could result in a substantial decline in business, which by itself is not a basis for a Temporary Injunction. However, when this result is combined with the challenges of the current coronavirus crisis, it could result in the closure of the business. *See Peek v. Spartanburg Reg'L Healthcare System*, 626 S.E.2d 34, 367 S.C. 450 (S.C. App. 2005). Therefore, the Court finds that irreparable harm has been established. (2) While determining an applicant's likelihood of success is always a difficult analysis at this stage, the Plaintiff has presented significant factors to show that it has a likelihood of success and the Court finds them sufficient for this analysis. (3) If the Plaintiff's business were to close due to the inability to use the drive and turn-around, then the plaintiff could lose customers and good will of his business and it would not be possible to determine damages in that instance. Therefore, the Plaintiff has established that it does not have an adequate remedy at law. Accordingly, the Court finds that the Plaintiff has established the 3 elements required for a Temporary Injunction.

The additional test of balancing the equities lends more support for granting the Temporary Injunction. According to the South Carolina Supreme Court, the trial court "must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The Plaintiff has been using the property in issue for many years and according to the Plaintiff's owner, a major portion of its business is dependent on the ability to use this gravel drive and turn-around area. On the other hand, the Defendant does not use this

gravel drive nor the turn-around, and it is unrefuted that the defendant's predecessors in title allowed the Plaintiff and its predecessors to use the property in this way. Therefore, maintaining the status quo allows the Plaintiff to continue using the land as it has been used in the past during the pendency of this action, while not causing any significant "inconvenience [or] damage" to the Defendant.

Based on these factors, the Court grants the Plaintiff's Motion for Temporary Injunction as follows:

1) Defendant shall not construct a fence or obstruction of any kind or take any action which would restrict Plaintiff's use of the gravel drive or turn-around area during the pendency of this action;

2) Defendant shall not take any action on its property which would damage the Plaintiff's property, the building, the gravel drive or the gravel turn-around; and

3) The Court further directs that both parties and their respective agents and representatives restrain from harassing the other party, their employees and customers.

This Order shall go in effect upon the Plaintiff's posting of security in the amount of \$2,500 as provided by SCRCF 65(c). The Court finds that this amount is sufficient to cover any "costs and damages" which the Defendant would suffer for improper injunctive relief.

The Court has also considered the Defendant's Motion to Dismiss pursuant to SCRCF 12(b)(6). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *HHHunt Corp. v. Town of Lexington*, 699 S.E.2d 699, 703 (S.C. App. 2010). "The trial court . . . must presume all well pled facts to be true." *Cricket Cove Ventures, LLC v. Gilland*, 701 S.E.2d 39, 44 (S.C. App. 2010). The Court finds that the various causes of action have been properly pled and Defendant's Motion is denied.

Further, the Court would direct the parties to participate in meaningful mediation as soon as possible and that the case be scheduled for trial at the earliest possible date consistent with the South Carolina Rules of Civil Procedure.

Signature page of Judge Perry H. Gravely to follow



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Temporary Injunction

So Ordered

s/ Honorable Perry H. Gravely, #2755