

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
)	
Plaintiffs,)	
)	
vs.	)	ORDER
	)	DENYING DEFENDANTS'
	)	MOTION TO REMOVE
	)	TEMPORARY INJUNCTION
	)	AND
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	DENYING DEFENDANTS'
	)	MOTION TO AMEND ANSWER
)	
Defendants.)	
)	

This matter came before the Court via remote communication technology (Webex) on March 30, 2022, for a hearing on Defendants' Motions to Amend their Answer and Remove Temporary Injunction. Bradford Neal Martin, Esq. and Gwendolyn G. Martin, Esq. appeared on behalf of Plaintiffs. Emily O'Brian, Esq. appeared on behalf of Defendants. The Court has reviewed the relevant pleadings, memoranda, previous order, and affidavits. For the reasons set forth below, the Motions are DENIED.

Defendants' Motion to Remove Temporary Injunction

This case involves a property dispute regarding the boundary line for 3668 Calhoun Memorial Highway in Easley and the use of a gravel turn-around to access a portion of the specialty vehicle repair and restoration business of Plaintiff, Hyper Formance, LLC (the "Back Building"). The rear of Plaintiffs' property is not accessible from the northern or eastern boundaries. The southern boundary of the property is accessed by entering from U.S. Highway 123. A gravel driveway runs along the western boundary leading to the Back Building, with a gravel turn-around area at the rear of the property and adjacent to the Back Building. Plaintiffs allege that the gravel turn-around area which is accessed using their gravel driveway is the only means of vehicular access to the Back Building.

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Plaintiffs allege that Defendant, Thomas SC Properties, LLC, the adjoining landowner along its western boundary, negligently excavated the Thomas Property. Plaintiffs further allege this excavation has caused significant erosion and other harm to Plaintiffs' property. Plaintiff filed a Motion for a Preliminary Injunction which was argued before the Honorable Perry H. Gravely, who granted the injunction by Order filed May 8, 2020.

The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). The May 8, 2020 Temporary Injunction was granted based upon three 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 Temporary Injunction was entered for "the pendency of this action." (Court Order dated May 8, 2020, p. 3). Defendants did not file a Rule 52(b) or 59(e) Motion to Alter or Amend the May 8, 2020 Order.

Defendants argue that a change in circumstances has occurred which entitles Defendants to a lifting of the Temporary Injunction. After a review of the Affidavits of Jonathan Thomas (both from 2020 and 2022) and Robert Brent Click, I find no evidence of a change in circumstances that would support lifting the Temporary Injunction less than two months before the scheduled trial date for this case.

I further agree with the finding in the May 8, 2020 Order that because a large portion of Plaintiffs' business is dependent on the ability to use the gravel turn-around, and on the other hand, the Defendants do not use the turn-around area, the potential harm to Plaintiffs if the Temporary Injunction is lifted is great while no significant damage will result to Defendants if the Temporary Injunction remains in place.

Therefore, Defendants' Motion to Remove the Temporary Injunction is denied. I further find that if this case is not reached for trial during at the May 23, 2022 term of court, any additional issues regarding the Temporary Injunction can be properly addressed by Judge Gravely. Plaintiffs' Response in Opposition to Defendants' Motion to Remove the Temporary Injunction seeks attorneys' fees for the filing of a frivolous motion, pursuant to Rule 65(f)(2), SCRPC. This issue is reserved for determination by the Trial Court.

Defendants' Motion to Amend Answer

Rule 15(a), SCRPC, sets forth the standard for granting motions to amend. It provides:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served . . . Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

The grant or denial of a motion to amend is within the Court's discretion. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). ("A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.").

This case has been pending for two years and is scheduled to be tried during the May 23, 2022 Term. I find that a counterclaim at this late stage of litigation would be prejudicial to Plaintiffs. I further find that such an amendment would be futile in that it would prolong litigation and would not serve the ends of justice, especially considering that Plaintiffs' Third Cause of Action already requests a Declaratory Judgment to Quiet Title as to the common property line of the parties. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' ... it may be denied where the proposed amendment would be futile."), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012).

Rule 7(b)(1), SCRCF, is substantially similar to its Federal counterpart, Rule 7(b)(1), FRCP. *Camp v. Camp*, 662 S.E.2d 458, 378 S.C. 237 (Ct. App. 2008). "[A] motion that fails to state any grounds for relief . . . is insufficient under Rule 7(b)(1)." *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1240 (10th Cir. 2006). Defendants' own Motion and Memorandum establish that the Counterclaim adds nothing to the case and is unnecessary because "the issues set forth in Defendants' Counterclaim are already set to be adjudicated as part of Plaintiffs' claims."

There are no grounds stated that show with "particularity" why amendment at this late stage should be granted. The particularity requirement "is to be read flexibly in recognition of the peculiar circumstances of the case." *Lucey v. Meyer*, 401 S.C. 122, 131, 736 S.E.2d 274, 279 (S.C. App. 2012) quoting *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir.1996).

IT IS HEREBY ORDERED THAT Defendants' Motion to Remove the Temporary Injunction is hereby DENIED and Defendants' Motion to Amend its Answer is hereby DENIED.

The Honorable Alex Kinlaw
Presiding Judge

_____, South Carolina This _____ day of _____, 2022



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/Alex Kinlaw, Jr., #2763