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SC Court of Appeals

ELECTRONICALLY FILED - 2024 Aug 05 2:56 PM - HORRY - COMMON PLEAS - CASE#2024CP2604542

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable B. Alex Hyman, Circuit Court Judge

Case No.: 2024-CP-26-04542

City of Myrtle BeachAppellant,

v.

Rent Me Superstore.....Respondent,

NOTICE OF APPEAL

City of Myrtle Beach appeals the following three (3) orders [judgments] of the Honorable B. Alex Hyman: (1) Order Granting Plaintiff’s Motion for Temporary Restraining Order (dated July 2, 2024); (2) Amended Order On Plaintiff’s Motion For Temporary Restraining Order (dated July 8, 2024); and (3) Temporary Injunction Order (dated July 30, 2024). Respondent did not serve Appellant with written notice of entry of the July 2, 2024 Order Granting Plaintiff’s Motion or the July 8, 2024 Amended Order On Plaintiff’s Motion for Temporary Restraining Order. Appellant received written notice of the July 30, 2024 Temporary Injunction Order on July 30, 2024.

Holly M. Lusk

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Attorney for Respondent, Rent Me Superstore

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable B. Alex Hyman, Circuit Court Judge

Case No.: 2024-CP-26-04542

City of Myrtle BeachAppellant,

v.

Rent Me Superstore.....Respondent,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the counselors of record listed below by electronic mail and U.S. Mail a copy of same on August 1, 2024, addressed to:

A. Preston Brittain, Esq.
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August 1, 2024

VIA ELECTRONIC AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: City of Myrtle Beach (Appellant) v. Rent Me Superstore (Respondent)
Circuit Court Case No. 2024-CP-26-04542

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on Respondent;
2. A copy of the Order Granting Plaintiff's Motion For Temporary Restraining Order;
3. A copy of the Amended Order On Plaintiff's Motion For Temporary Restraining;
4. A copy of the Temporary Restraining Order;
5. Filing fee of \$250.00; and
6. Copy of Transcript Request Form SCCA 800 requesting a copy of the transcript in this matter.

If you need anything additional or have any questions, please do not hesitate to let me know.

Sincerely,
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

Holly M. Lusk
Douglas M. Zayicek
Holly M. Lusk

Enclosures

cc: A. Preston Brittan, Esq.

RECEIVED
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SC Court of Appeals

ELECTRONICALLY FILED - 2024 Aug 05 2:56 PM - Horry County Common Pleas - CASE#2024CP2604542

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
)	
Rent Me Superstore,	)	CA No.: 2024-CP-26-04542
)	
)	
Plaintiff,)	
)	
v.	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR TEMPORARY
City of Myrtle Beach,	)	RESTRAINING ORDER
)	
Defendant.)	

STANDARD OF REVIEW

Rule 65 of the South Carolina Rules of Civil Procedure sets forth the procedure for issuing Temporary Injunctive Relief AND the issuance of a Temporary Restraining Order. Under the relevant case law, a party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy of law. Rawlinson Road Homeowners Association, Inc., vs. Jackson, 395 S.C. 25, 35 (Ct. App. 2011). The Courts recognize that an injunction is a drastic remedy and should be issued only to prevent irreparable harm suffered by the moving party. AJG Holdings, LLC, vs. Dunn, 382 S.C. 43 (Ct. App. 2009). The Court must consider each of the three elements to determine whether the drastic remedy of Temporary Injunctive Relief should be granted.

FACTS/OVERVIEW

Rent Me Superstore holds a franchise license to rent golf carts in the City of Myrtle Beach (hereinafter referred to as "Respondent/Defendant/City") and a business license. (Rent Me Superstore has three locations in Myrtle Beach). Plaintiff generates nearly all its annual revenue in late June to early August. Plaintiff has been granted annual franchise licenses through the City for over seven years. Plaintiff seeks an injunction to resume operations after the City of Myrtle

Beach suspended Plaintiff's franchise license for forty-five days. The suspension became effective on June 11, 2024, and ends July 26, 2024.

SUSPENSION

The City of Myrtle Beach passed an ordinance suspending Plaintiff's franchise agreement because Plaintiff failed to timely pay his annual business license renewal fee and annual decal fees (per cart fees per the annual franchise agreement). On May 21, The City of Myrtle Beach delivered Plaintiff a letter indicating that he had failed to pay his business licensee fee and the \$10.00 per location per decal fee. The letter further stated the City of Myrtle Beach would consider action on May 28, 2024, including but not limited to suspension or revocation of his franchise agreements. In response, Plaintiff paid the fees immediately.¹ Both payments, business license fee and decal fees were paid in full and accepted by the City of Myrtle Beach. (See attached). Despite the payment in full, the City of Myrtle Beach voted to suspend Rent Me Superstore's franchise agreement for forty-five days. Thereafter, Plaintiff appeared before City Council at their next meeting seeking a reduction of the suspension, but no reduction was granted.

I. Irreparable Harm

The forty-five-day suspension threatens the survival of Rent Me Superstore. During this time of the year, Plaintiff makes roughly \$10,000.00 per day.² Without these high grossing days, Plaintiff will lose employees, good will, marketing, and contracts with third parties, such as insurance companies or his landlord, which are jeopardized by being unable to earn income during the suspension. Not surprisingly, the July 4th week is Plaintiff's most busy of the year – and every day Rent Me Superstore is suspended threatens the survival of the company. Plaintiff has shown sufficient evidence of irreparable harm.

¹ Receipts indicate 5/23/2024 payment of both business license fee and decal fees.

² Less than but nearly \$450,000.00 of loss revenue in these 45 days.

II. Likelihood of Success on Merits

There is no specific authority granted to the City of Myrtle Beach to impose a forty-five day suspension to conduct business related to late payments. The City of Myrtle Beach has certain franchise powers bestowed upon them by virtue of South Carolina Code Ann. Section 5-7-30, which imposes a limitation upon that power. At this stage in the proceeding, Plaintiff has made a sufficient showing that the City did not have authority under the circumstances to suspend a company business operations or that doing so violated the spirit of the franchise agreement.

III. Absence of Adequate Remedy at Law

Here, in the absence of a preliminary injunction, Rent Me Superstore, will suffer irreparable harm for which it cannot be compensated adequately in monetary damages, including, but not limited to, damages resulting from losing employees, clients, market share, and business goodwill. *See Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 626 S.E.2d 38, 42 n.3 (Ct. App. 2005) (holding that the loss of one's clients and client base can constitute irreparable harm supporting injunctive relief). Courts in other jurisdictions have also upheld injunctive relief to prevent the loss of the business. *See, e.g., District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 527 A.2d 1142, 1146 (Vt. 1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction."); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex. Ct. App. 2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.").

Based on review of the facts presented, with the understanding that this Court is without the benefit of an evidentiary hearing, the Court has determined that the claims made by the Plaintiff demonstrate irreparable harm, a likelihood of success on the merits, and no adequate remedy at law.

The Plaintiff has made a showing to this Court worthy and warranting the Temporary Relief that is seeks. The Court is aware of the relative harm that would be brought upon the respective parties in denying or granting temporary relief, which weighs heavily in Plaintiff's favor. In denying the requested relief, the Plaintiff would continue to suffer irreparable harm and risk continued and permanent irreparable harm. NOW,

THEREFORE, a Temporary Restraining Order, granting Temporary Relief in favor of the Plaintiff is granted and shall remain in force and full effect immediately until a merits hearing, which is hereby scheduled for Thursday, July 11, 2024. Defendant is restrained from suspending Plaintiff from operating his business until such time. Plaintiff shall pay a \$2,500.00 bond.

AND IT IS SO ORDERED.

The Honorable B. Alex Hyman
15th Judicial Circuit Court

_____, 2024



Horry Common Pleas

Case Caption: Rent Me Superstore VS Myrtle Beach City Of
Case Number: 2024CP2604542
Type: Order/Temporary Restraining Order

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2024-07-02 11:16:33 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
)	
Rent Me Superstore,	)	CA No.: 2024-CP-26-04542
)	
	)	Plaintiff,
)	
v.	)	AMENDED ORDER ON PLAINTIFF'S
	)	MOTION FOR TEMPORARY
City of Myrtle Beach,	)	RESTRAINING ORDER
)	
_____	)	Defendant.

STANDARD OF REVIEW

Rule 65 of the South Carolina Rules of Civil Procedure sets forth the procedure for the issuance of a Temporary Restraining Order (“TRO”). Under the relevant case law, a party seeking a TRO must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy of law. Rawlinson Road Homeowners Association, Inc., vs. Jackson, 395 S.C. 25, 35 (Ct. App. 2011). The Courts recognize that a TRO is a drastic remedy and should be issued only to prevent irreparable harm suffered by the moving party. AJG Holdings, LLC, vs. Dunn, 382 S.C. 43 (Ct. App. 2009).

FACTS/OVERVIEW

Plaintiff, Rent Me Superstore, holds a franchise license to rent golf carts in the City of Myrtle Beach (hereinafter “Respondent/Defendant/City”) and a business license. On June 11, 2024, Defendant suspended Plaintiff’s franchise license for forty-five (45) days for Plaintiff’s failure to pay its annual business license renewal fee and for failure to pay its annual decal fees. Plaintiff seeks a TRO to resume operations until the Court holds an evidentiary hearing.

CONCLUSIONS

Based on review of the facts presented, with the understanding that the Court at this time is without the benefit of an evidentiary hearing, the Court has determined that the claims made by the Plaintiff demonstrate irreparable harm, a likelihood of success on the merits, and no adequate remedy at law.

THEREFORE, a TRO in favor of the Plaintiff is granted and shall remain in force and full effect immediately until a merits hearing, which is hereby scheduled for Thursday, July 11, 2024. Defendant is restrained from suspending Plaintiff from operating his business until such time. Plaintiff shall pay a \$2,500.00 bond.

AND IT IS SO ORDERED.

The Honorable B. Alex Hyman
15th Judicial Circuit Court

_____, 2024



Horry Common Pleas

Case Caption: Rent Me Superstore VS Myrtle Beach City Of

Case Number: 2024CP2604542

Type: Order/Amend

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2024-07-08 14:31:20 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
)	
Rent Me Superstore,	)	CA No.: 2024-CP-26-04542
)	
)	
Plaintiff,)	
)	
v.	)	TEMPORARY INJUNCTION ORDER
)	
City of Myrtle Beach,)	
)	
Defendant.)	

OVERVIEW

Rent Me Superstore (“Plaintiff”) filed a motion for a temporary restraining order (“TRO”) against City of Myrtle Beach (“Defendant” or “City”) on July 1, 2024. The court granted Plaintiff’s motion for a TRO, required Plaintiff to pay a bond in the amount of \$2,500, and scheduled an evidentiary hearing for July 11, 2024. At the hearing on July 11, 2024, Plaintiff was represented by attorney A. Preston Brittain; Defendant was represented by attorney Douglas M. Zayicek. After hearing arguments from counsel, witness testimony, and receiving evidence from both sides, the court grants Plaintiff’s motion for a temporary injunction against Defendant.

STANDARD OF REVIEW

Rule 65 of the South Carolina Rules of Civil Procedure sets forth the procedure for issuing temporary injunctive relief. Under the relevant case law, a party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy of law. Rawlinson Road Homeowners Association, Inc., vs. Jackson, 395 S.C. 25, 35 (Ct. App. 2011). The courts recognize

that an injunction is a drastic remedy and should be issued only to prevent irreparable harm suffered by the moving party. AJG Holdings, LLC, vs. Dunn, 382 S.C. 43 (Ct. App. 2009).

FACTS & FINDINGS

Plaintiff holds a franchise license to rent golf carts in the City of Myrtle Beach, the defendant in this case, and a business license. On June 11, 2024, Defendant, by means of an ordinance, suspended Plaintiff's franchise license for forty-five (45) days for Plaintiff's failure to timely pay its annual business license renewal fee and for failure to pay its annual decal fees. The court received testimony that during this time of year Plaintiff generates much of its annual profit, and that without these high grossing days, Plaintiff stands to lose employees, good will, and money. Plaintiff has therefore demonstrated sufficient evidence of irreparable harm. Additionally, Plaintiff has a strong argument that the City, by imposing the forty-five-day suspension, has exceeded its authority under South Carolina Code Ann. § 5-7-30 and has therefore demonstrated a likelihood of success on the merits. Finally, given the seasonal nature of Plaintiff's business and therefore the urgency of immediate relief, the court finds that there is no adequate remedy at law.

CONCLUSION

For these reasons, Plaintiff has made a showing to this court warranting the temporary injunctive relief it seeks. The court is aware of the relative harm that would be brought upon the respective parties in denying or granting temporary relief,

which weighs in Plaintiff's favor. In denying the requested relief, the Plaintiff would continue to suffer irreparable harm.

WHEREFORE, the court has determined that the claims made by the Plaintiff demonstrate irreparable harm, a likelihood of success on the merits, and no adequate remedy at law, and that, further, a temporary injunction in favor of the Plaintiff is granted and shall remain in force and full effect during the pendency of the underling action. The City is temporarily enjoined from suspending Plaintiff from operating his business for the remainder of the 45-day suspension.

AND IT IS SO ORDERED.

The Honorable B. Alex Hyman
15th Judicial Circuit Court

_____, 2024



Horry Common Pleas

Case Caption: Rent Me Superstore VS Myrtle Beach City Of
Case Number: 2024CP2604542
Type: Order/Temporary Injunction

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2024-07-30 09:51:00 page 4 of 4

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable B. Alex Hyman, Circuit Court Judge

Case No.: 2024-CP-26-04542
Appellate Case No.: 2024-001265

Rent Me Superstore..... Respondent,

v.

City of Myrtle Beach..... Appellant,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal filed with the Horry County Clerk of Court on the counselors of record listed below by electronic mail and U.S. Mail a copy of same on August 6, 2024, addressed to:

A. Preston Brittain, Esq.
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preston@brittainlawfirm.com

Attorney for Respondent, Rent Me Superstore

s/Douglas M. Zayicek

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TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

August 6, 2024

VIA EMAIL ONLY: ctappfilings@sccourts.org

The Honorable Jenny Abott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Rent Me Superstore, Respondent v. City of Myrtle Beach, Appellant
Appellate Case No. 2024-001265

Dear Ms. Kitchings:

Enclosed for filing is the Notice of Appeal filed with the Clerk of Court for Horry County regarding the above-referenced case. Also enclosed is a Proof of Service serving Mr. Brittain with the same. If you need anything additional or have any questions, please do not hesitate to contact our office.

Sincerely,
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

Nicole M. Richardson
Paralegal to Douglas M. Zayicek

:nmr

Enclosures

cc: A. Preston Brittain, Esq.