

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
Civil Action No.: 2013-CP-26-00980

Rawcliffe Resorts, Inc. )  
 )  
Plaintiff, )

ORDER OF CONTEMPT  
(Violations of Temporary Injunction)

v. )  
 )  
Matt Becker and Associates, Inc. )  
d/b/a Ocean Breeze Beach Vacations, )  
Matt Becker and Karen Clark Becker, )  
 )  
Defendants. )

**RECEIVED**

MAY 28 2014

**SC Court of Appeals**

HORRY COUNTY  
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**PRESIDING JUDGE:**  
**COURT REPORTER:**  
**DATE OF HEARING:**  
**PLAINTIFF'S ATTORNEY:**  
**DEFENDANTS' ATTORNEY:**

The Honorable Larry B. Hyman  
Kay Richardson  
February 10, 2014  
James L. Hills and Jennifer D. Hills  
Randall K. Mullins

This matter came before the Court on an Order and Rule to Show Cause and Petition and Citation for Contempt filed by the Plaintiff's counsel on August 29, 2013 and duly served on both individual Defendants named above, as well as the corporation Matt Becker and Associates, Inc., on September 10, 2013. This motion was originally scheduled to be heard on October 2, 2013, but the hearing was continued from that day until February 10, 2014 as a result of a Motion for Continuance filed by the Defendant's counsel on October 1, 2013. Also heard contemporaneously on February 10, 2014 were four (4) other motions: Defendants' Motion for a Protective Order, Defendants' Motion for a Stay of Proceedings, Plaintiff's Amended Motion to Compel Discovery, and Defendants' Amended Motion to Compel Discovery. Though all were heard that day, only the Plaintiff's Motion for a Rule to Show Cause is discussed in this order and the results of the other motions shall be outlined in a separate order.

Present at the hearing, for the Plaintiff, were James L. Hills and Jennifer D. Hills, attorneys, and a representative of the Plaintiff, Lee J. Rawcliffe, President of Rawcliffe Resorts, Inc. Present for the Defendants were Matt Becker, Owner/President of Matt Becker & Associates, Inc. d/b/a Ocean Breeze Beach Vacations; Karen Becker, Defendant and employee of Ocean Breeze Beach Vacation; and counsel for the Defendants, Randall K. Mullins.

After hearing the testimony of the Parties and their witnesses, examining the pleadings and exhibits presented by the Parties, this Court now makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Plaintiff is a corporation with its principal place of business in Horry County, South Carolina. Defendants are citizens and residents of Horry County, South Carolina and have been for more than six months prior to the commencement of this action. This Court has jurisdiction over both the parties and the subject matter of this action.
2. Karen Becker, Matt Becker, and Matt Becker as agent for Matt Becker & Associates, Inc., were all properly served with the Plaintiff's Rule to Show Cause, as evidenced by the Affidavits of Service in this Court's file.
3. Pursuant to a Motion for a Temporary Injunction filed by the Plaintiff on February 15, 2013, the parties freely entered into a Consent Order Granting Temporary Injunction Against Ocean Breeze Beach Vacations and Karen Becker (hereafter "Temporary Injunction") on April 2, 2013. That order was signed by the Honorable Benjamin H. Culbertson and includes the signatures of all parties and their counsel at that time, as well as the initials of each party on each page. This Order was filed the same day.

4. The Temporary Injunction clearly states that:

“Defendants shall not use by word (whether oral or written) any description of any amenity owned by Plaintiff, or imply access to any amenity owned by Plaintiff. These amenities include, but are not limited to: . . . “Sand Dunes Water Park”. (Consent Order Granting Temporary Injunction, April 2, 2013)

5. The Plaintiff called as its first witness Lee J. Rawcliffe, who is President of Rawcliffe Resorts, Inc. Mr. Rawcliffe testified about his personal experiences with disgruntled customers of Ocean Breeze Beach Vacations who were given fake wristbands by the Defendants. His testimony, in summary, was that those customers bearing fake wristbands were denied access to amenities owned by Rawcliffe Resorts, Inc. His employees are able to distinguish fake wristbands because those wristbands did not have that week’s codes on them and thus were clearly not authentic wristbands provided by the resort. The Court found his testimony entirely credible.
6. Next David Rivera, facilities manager of Rawcliffe Resorts, Inc., testified to his personal experiences discovering fake wristbands on customers of Ocean Breeze Beach Vacations during the summer season of 2013. His testimony was that he repeatedly encountered customers of the Defendants’ who had fake wristbands and were attempting to access Rawcliffe Resorts amenities without being aware that their rooms did not entitle them to use of those amenities. He specifically testified to his experience with Kim Ball, a customer of Ocean Breeze Beach Vacations, whose deposition was taken and the transcript of that deposition admitted into evidence without objection. The Court found his testimony entirely credible.
7. Ms. Ball’s testimony, in summary, was that she and her family were explicitly told by Ms. Becker in a telephone conversation at the time they reserved their room that they would have access to amenities, specifically including the water park. Upon arriving

at the resort, Ms. Ball testified that she and her family were denied access to the water park and notified the Beckers of this problem via a voicemail to Ms. Becker's telephone. The call was not returned, and Ms. Ball testified that she called again and spoke to Matt Becker, who said that he would relay the message to his wife. Shortly thereafter, the desired number of wristbands were left in their hotel room in an envelope. Upon attempting to use these wristbands, Ms. Ball's family was notified by Rawcliffe Resort employees that their wristbands were not authentic. Ms. Ball and her family were informed that because their wristbands were fake, they would not be allowed to come back to the water park for the remainder of their stay. At that time Ms. Ball testified that she was put into contact with Mr. Rawcliffe, who asked that she sign an affidavit recounting her experience. After Ms. Ball signed an affidavit recounting her experience, Mr. Rawcliffe gave she and her family members authentic wristbands in order that their family vacation not be ruined. Ms. Ball specifically testified, upon questioning by Mr. Mullins, that she did not know she would be receiving authentic wristbands when she signed the affidavit.

8. At the close of the Plaintiff's showing, counsel for the Defendants, Mr. Mullins, moved to dismiss the Plaintiff's Rule to Show Cause for failure to meet their burden of proof. The Court summarily denied this motion without hearing argument from the Plaintiff.
9. The Defendants called as their first witness Matt Becker, President and agent of Matt Becker & Associates, Inc. d/b/a Ocean Breeze Beach Vacations. Mr. Becker testified that, although he had no recollection of that phone call or any information relating to wristbands and the use of amenities as it relates to Rawcliffe Resorts, he must have

talked to Ms. Ball if Ms. Ball said he had (Transcript of Record, February 10, 2014, page 63, line 12). Mr. Becker offered no other explanation for how Ms. Ball ended up with fake wristbands similar to those of guests of Rawcliffe Resorts. When asked about his wife's affidavit from the Temporary Hearing, in which she stated that she had "always" procured wristbands for her guests so they could use the water park, he acknowledged her admission and still denied any personal knowledge of these activities and offered no credible explanations. The Court found his testimony lacked credibility.

10. Next Karen Becker, employee of Ocean Breeze Beach Vacations, testified for the Defendants. Ms. Becker also denied any knowledge of any fake wristbands being given to her customers after the date of the Temporary Injunction. She did admit, however, that she "always" ordered wristbands for her guests to use before the injunction. She denied knowing that the water park was only for Rawcliffe Resorts guests before the date of the Temporary Injunction, although she stated that before the injunction she did not ask the front desk at Rawcliffe Resorts for wristbands for her customers because she "knew they wouldn't give them to her." However, upon learning her guests would not be able to use the water park in the future, Ms. Becker specifically testified that she did *not* relay this information to customers with existing reservations. She also denied that any guests who arrived after the injunction asked her for wristbands. She denied ever discussing the water park with Ms. Ball or ever receiving any communication from Ms. Ball seeking wristbands. She did not offer any explanation as to how Ms. Ball and other customers came into possession of fake wristbands, and the Court found that her testimony lacked credibility.

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11. "Direct contempt is defined as contemptuous conduct occurring in the presence of the Court." *State v. Kennerly*, 331 S.C. 442, 450, 503 S.E.2d 214, 219 (Ct. App 1998) *aff'd* by 337 S.C. 617, 524 S.E.2d 837 (1999) (citing *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955)). "Constructive contempt is contemptuous conduct occurring outside the presence of the court." *Kennerly*, 331 S.C. at 451, 503 S.E.2d at 219 (citing *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994)). As the actions of the Defendants clearly took place outside the presence of the Court, their actions, if contemptuous, constitute constructive contempt.

12. Criminal and civil contempt can be distinguished by the nature of the punishment. Civil contempt is accompanied by a punishment intended to remedy the violation of the order and coerce the contemnor to abide by the court's directive. Civil contempt must be shown by clear and convincing evidence. Criminal contempt is accompanied by a sentence intended only to ~~push~~ <sup>PUNISH</sup> the wrongful act and cannot be purged by following the court's directive. *Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86 (S.C. 1998).

13. I find that Karen Becker intentionally provided fraudulent wristbands to Kim Ball and her family, and that those wristbands clearly implied access to Plaintiff's amenities and were a clear violation of the provisions of the Temporary Injunction.

14. I find that Matt Becker intentionally provided fraudulent wristbands to Kim Ball and her family, and that those wristbands clearly implied access to Plaintiff's amenities and were a clear violation of the provisions of the Temporary Injunction.

15. By clear and convincing evidence and testimony offered by the Plaintiff, I find that the Defendants, by their own actions and/or at their direction, violated the Temporary Injunction. I find that these violations are clear civil indirect contempt.
16. I find that an appropriate sentence for the above violations of the Temporary Injunction shall be a sentence of 30 days incarceration. However, Mr. and Mrs. Becker may purge that sentence at any time by paying ~~\$~~ \$1,000<sup>00</sup> dollars to the Horry County Clerk of Court. This fine is not intended to be solely punitive, but is instead imposed in recognition of court costs and the fact that the damages due to this violation of an injunction are particularly difficult to quantify.

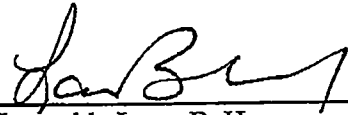
**IT IS THEREFORE ORDERED THAT:**

- 1) Karen Becker and Matt Becker are both in civil contempt for violation of an order of this honorable Court; and
- 2) Karen Becker shall be confined to J. Reuben Long Detention Center for 30 days for her violations of the Temporary Injunction, including intentionally providing fraudulent wristbands, which clearly implied access to the Plaintiff's amenities and was a clear violation of the provisions of the Temporary Injunction; however
- 3) Karen Becker may purge the above sentence at any time by the payment of \$1,000<sup>00</sup> dollars to the Horry County Clerk of Court;
- 4) Matt Becker shall be confined to J. Reuben Long Detention Center for 30 days for his violations of the Temporary Injunction, including intentionally providing

fraudulent wristbands, which clearly implied access to the Plaintiff's amenities and was a clear violation of the provisions of the Temporary Injunction; however

- 5) Matt Becker may purge the above sentence at any time by the payment of \$ 1,000<sup>00</sup> dollars to the Horry County Clerk of Court; and
- 6) ~~The Defendants shall pay to the Plaintiff the Plaintiff's fees and costs incurred as a result of bringing this action. Plaintiff may file a separate motion to have the attorneys' fees and costs determined.~~ *AM*

AND IT IS SO ORDERED.



The Honorable Larry B. Hyman  
Presiding Judge of the Court of Common Pleas  
Fifteenth Judicial Circuit

*April*  
March 17, 2014  
Conway, South Carolina