

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina on the relation of)
William Walter Wilkins, III, Solicitor of)
the Thirteenth Judicial Circuit,)

Plaintiff,)

vs.)

Elephant, Inc. and Frontage Road)
Associates, Inc.,)

Defendants.)

C.A. No.: 2015-CP-23-02597

**ORDER GRANTING TEMPORARY
INJUNCTION**

FILED
OFFICE OF THE CLERK
PAUL A. COOPER, CLERK
2015 MAY 6 PM 11:54

The Solicitor of the Thirteenth Circuit ("Solicitor") brought the present civil action pursuant to S.C. Code § 15-43-10 *et seq.* ("Nuisance Statute") on behalf of the State of South Carolina ("State"). The action was filed April 17, 2015. As allowed under the Nuisance Statute, the Solicitor also filed a motion seeking a temporary injunction pursuant to S.C. Code § 15-43-30 ("Motion") seeking to close the sexually oriented business operated in Greenville County by Elephant, Inc ("EI") and known as "Platinum Plus" ("PP"). Frontage Road Associates, Inc. owns the real estate of which EI is a tenant. A hearing was conducted on the Solicitor's Motion on April 24, 2015. All parties appeared and were represented by well prepared and zealous counsel. Understanding the importance of the issues to all parties and the short time frame in which Defendants' counsel had to prepare for the hearing held April 24, 2015, the Court allowed all parties to submit post-motion briefs. The Court has reviewed all pre- and post-motion submissions.



As an initial matter, the Court addresses the challenges to service of process ("Service") raised by Defendant Elephant, Inc. ("EI").¹ The record evidence reflects the Solicitor first attempted Service upon the registered agent of EI as identified by records on file with the South Carolina Secretary of State. (See R. Monroe Aff.; J. Smith Aff., ¶¶3-8.)² The Solicitor contends, as stated in the affidavit, that such Service was refused by the individuals encountered at the address of EI's registered agent. (*Id.*)

When Service upon EI's registered agent was not effected, the Solicitor directed the delivery of Service to the manager then in charge of EI's Greenville location at 805 Frontage Road in Greenville ("Subject Property").³ (See Todd Aff., ¶¶3-4.) The Greenville County Sheriff's Office ("GCSO") thereafter served an individual named Robert Zurich ("Zurich"). (*Id.* at 8; 4/29/2015 EI Opp. Brief, p. 3.). Accordingly, the initial issue before the Court is whether service upon Zurich constitutes proper service on EI such that this Court has personal jurisdiction over EI.

Sergeant Claude Todd of GCSO personally served Zurich on April 20, 2015 at the PP location at 805 Frontage Road, Greenville, SC. (Todd Aff., ¶8.)⁴ Upon arrival at the Subject Property, Sergeant Todd's affidavit reflects he asked to speak "to whomever was in charge." (*Id.* at 4.) Zurich then "stepped forward and identified himself as the manager in charge" and confirmed he would deliver the paperwork to the people who needed it. (Todd Aff., ¶9.)

¹ Such arguments only relate to EI. During the April 24, 2015 hearing, Defendant Frontage Road Associates, Inc. ("FRAI") acknowledged the Solicitor properly served FRAI. Counsel for EI appeared but did not waive their client's objection to service and personal jurisdiction.

² The registered agent for EI on file with the Secretary of State is Vanseea Mascea at 800 Bush River Road in Columbia, South Carolina.

³ The Subject Property is the site where the acts and omissions giving rise to this lawsuit allegedly occurred.

⁴ The legal paperwork served on EI included: the summons, the verified petition with exhibits, the motion for a temporary injunction, the Curtis Affidavit, and the notice of hearing. (Todd Aff., ¶7.)

Affidavits of Zurich and Kevin Ford, both employees of EI, assert that, while Zurich may have been a "day manager", he was not authorized to accept service on behalf of EI.

The South Carolina Rules of Civil Procedure authorize Service on a corporation's "managing or general agent." Rule 4(d)(3), SCRCF. Based upon the record evidence and the holding of *Schenck v. National Health Care*, 471 S.E.2d 736, 737-38 (Ct. App. 1996), the Court finds under the unique facts of this case that Zurich was held out by EI as, and in fact constituted, a "managing or general agent" of EI within the meaning of Rule 4(d)(3), SCRCF. Accordingly, I find that the Solicitor properly served EI through the person on-site at PP who identified himself as the proper person to accept service. Thus, I find that this Court has jurisdiction over EI.

The Court now addresses the merits of the Solicitor's Motion. As noted *supra*, the Thirteenth Circuit Solicitor's Office, a governmental entity, brought the instant Motion pursuant to South Carolina Code § 15-43-30. The Court must, therefore, look to the Nuisance Statute to determine whether temporary injunctive relief should issue. *See, e.g., Cnty. Of Richland v. Simpkins*, 560 S.E.2d 902, 904 (Ct. App. 2002) (Holding modified in part on other grounds). EI argues that the common law test for issuance of injunctive relief applies since the Nuisance Statute does not outline specific conditions or the analysis the court is to apply. However, I find that ordinary preliminary injunction standards as set forth in common law cases do not apply since the State is proceeding under a specific statute enacted by our legislature. (*Id.*)⁵ The analysis thus initially involves: (1) determining whether the Nuisance Statute covers the situation in the present case; and (2) whether the Solicitor has satisfactorily established a violation of the Nuisance Statute (*Id.*; *see also* FN5.).

⁵*See also City of Columbia v. Pick-a-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000); 42 AM. JUR. 2D *Injunctions* §25 (2015) ("A statute may impose upon a court the positive duty to grant injunctive relief under specified conditions. A statutory request for injunctive relief is governed by the requirements of the statute, and express statutory language supersedes common-law requirements.")

The Court finds the Solicitor has satisfied his burden in this regard. First, the statutory definition of nuisance under South Carolina Code § 15-43-10(A) clearly embraces the conduct at issue here.⁶ And, South Carolina Code § 15-43-30 requires the Court to enter preliminary injunctive relief if the evidence presented by the Solicitor sufficiently establishes that a nuisance occurred at the Subject Property under S.C. Code § 15-43-10(A). As a result, the Nuisance Statute both embraces the issues herein and affords temporary injunctive relief to the State upon a satisfactory showing.⁷ What is required for a "satisfactory" showing is set forth below.

The Court must next determine whether the Solicitor has adequately established a violation of the Nuisance Statute entitling the State to a temporary injunction. (See S.C. Code § 15-43-30 ("[T]he court...shall...allow a temporary writ of injunction..."). According to the Solicitor, Defendants violated the Nuisance Statute because acts of prostitution, assignation, and lewdness occurred at the Subject Property. (See Memo. in Supp., p. 1; see also Verified Petition.) EI denies these allegations. However, and as more fully set forth below, the Court finds the Solicitor has satisfied the burden under S.C. Code § 15-43-30 by introducing evidence demonstrating a repeated and continuous nuisance, as defined by the law set forth below, existed at the Subject Property within the meaning of the Nuisance Statute.

In reaching this conclusion it is critical to note that, as a threshold issue, sexually oriented businesses may lawfully operate in South Carolina and, more specifically, here in Greenville County. Thus, in interpreting and applying the Nuisance Statute, the Court must first analyze what the terms lewdness, assignation, and prostitution ("Prohibited Acts") mean under the

⁶ The Court incorporates herein by reference the full text of both S.C. Code §§ 15-43-10(A) & 15-43-30.

⁷ The Court would also note that S.C. Code § 15-43-30 has been previously invoked on behalf of the State to close a business--pending a trial on the merits--due to a violation of the Nuisance Statute. (See, e.g., *State ex rel. Hembree v. Sherald*, No. 2010-UP-448, 2010 WL 10085571, at *2 (Ct. App. Oct. 19, 2010) (Unpub.) (Holding a preliminary injunction that shuttered a business for over a year before a trial on the merits under the Nuisance Statute did not moot the action.)

Nuisance Statute. The Court finds the following sources relevant in analyzing the Prohibited Acts: South Carolina Code § 16-15-90⁸; Greenville County Code of Ordinances ("GCCO") §§ 2.5-71, 2.5-72, 2.5-73, 2.5-82, & 2.5-87 (Enacted as Ord. No. 2673);⁹ and a prior Consent Order executed by EI on January 24, 2002.¹⁰ (*Compare* FN9 with FN10.) It is certainly noteworthy that in this Consent Order it was clearly defined as to what could or could not occur in PP and the Consent Order also sets out the affirmative duties and obligations that PP undertook in its location at 805 Frontage Road. Thus, it is against the legal framework established by these sources that the Court must next determine if the evidence sufficiently establishes that Prohibited Acts occurred.

Taken alone, paragraphs 4 through 10 of the Affidavit of Deputy Sheriff Robert Curtis ("Deputy Curtis"), which EI contends is inadmissible hearsay in its entirety, along with the video evidence (attached as Exhibit D to the Verified Petition),¹¹ amply establish the Prohibited Acts repeatedly and consistently occurred at the Subject Property in violation of South Carolina Code § 15-43-10(A). GCSO's investigation at Platinum Plus involved over fifteen (15) visits to the Subject Property. (*Id.* at 4.) Paragraph 9 of Deputy Curtis's Affidavit evidences a wide range of

⁸ South Carolina Code § 16-15-90 declares prostitution and acts in furtherance thereof illegal in South Carolina. The Court incorporates South Carolina Code § 16-15-90 herein by reference.

⁹ Greenville County Ordinance prohibits the use of the Subject Property as a "sexually oriented business." (GCCO § 2.5-87.) Under the Ordinance, no person in the Subject Property may appear in a "state of nudity" or engage in live performances characterized by the exposure of "specified anatomical areas" or by "specified sexual activities." (GCCO § 2.5-72 ("Adult cabaret").) No person in the Subject Property may display her/his "bare buttock, anus, male genitals, female genitals, or female breast." (*Id.* ("Nudity" or "a state of nudity").) Moreover, no person in the Subject Property may engage in the "(1) ... fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) Masturbation, actual or simulated..." (*Id.* ("Specified sexual activities").)

¹⁰ In the January 24, 2002 Consent Order, EI stipulated by judicial decree that EI shall not operate a "sexually oriented business" by allowing any person: to appear in "state of nudity," to engage in "specified sexual activities," or to display "specified anatomical areas" as defined by GCCO #2673 and codified at GCCO §2.5-72.

¹¹ EI concedes Exhibit D is its own surveillance footage from the Subject Property. The pertinent part of the video evidence begins at approximately the five minute mark of Exhibit D.

Prohibited Acts that he personally observed during GCSO's investigation. (*Id.* at 9.) Thus, the Court finds that the affidavit and the video are admissible for the purposes of the present motion. And, to the extent the Deputy Curtis affidavit may contain some degree of hearsay outside of his personal observations, the Court has disregarded the same. For purposes of the instant motion, the Court is compelled to find that such repeated and consistent acts constitute a nuisance under South Carolina Code § 15-43-10(A).¹²

Despite EI's objections, the Court also finds the many sworn statements of the female "entertainers" submitted as attachments to the Curtis Affidavit are admissible. (*See* Curtis Aff., Attach. C-1 to C-8.)¹³ The content of the statements reflect they were based upon the personal knowledge and observations of the individuals who made them. (*Id.*) The statements indicate their content is accurate and correct. (*Id.*) With exception of one statement by an EI employee, the statements were sworn to a notary. (*Id.*) The Court finds such statements are admissible and properly considered by the Court, particularly at the temporary injunction stage. (*Id.*) The Court further finds that these statements both corroborate and expand upon the Prohibited Acts personally observed by Deputy Curtis and captured on the video evidence. (*Id.*) But, as noted above, even if the Court did not consider the statements, the Court would still find, and does find, the State amply satisfied its burden with the Curtis Affidavit and video evidence alone.¹⁴

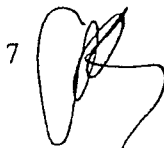
¹²The Court incorporates herein by reference the conduct set forth in Paragraph 9 of the Affidavit of Deputy Curtis. (Curtis Aff., ¶9.) "Of note, most or all of the sexually related acts set forth [in Paragraph 9 of the Curtis Affidavit] were not isolated occurrences." (*Id.* at 10.) The conduct "serially occurred at Platinum Plus over [Curtis's] fifteen (15) or more visits to the Subject Property as witnessed by [him] and other undercover GCSO officers." (*Id.*) And, with respect to such evidence, EI provides scant, if any, evidence rebutting the same.

¹³ The Court incorporates the content of the statements attached to the Curtis herein by reference. (Curtis Aff., Attach. C-1 to C-8.)

¹⁴ The Court did not consider the online statements (attached as Exhibit F to the Curtis Affidavit) in connection with this Order.

The Court next finds the evidence submitted thus far, as noted above, fails to establish abatement has occurred within the meaning of the Nuisance Statute. Initially, under the Nuisance Statute, only "the owner of the real estate" has a right to avoid suit by statutory abatement. (S.C. Code § 15-43-110.) The evidence of record confirms FRAI owns the real estate, not EI. (See Curtis Aff., ¶8 & Attach. B.) Thus, EI can avoid neither suit nor the instant Motion by *post facto* claims that it implemented measures to cease the unlawful conduct. And, the fact that at the time Solicitor served the March 27, 2015 written notice of the alleged nuisance upon FRAI, he also served EI with the same written notice of the alleged nuisance is not legally relevant under the Nuisance Statute. To accept EI's argument allowing a tenant to abate a nuisance would require the Court to re-write the Nuisance Statute.

However, even if EI as a tenant could abate under the Nuisance Statute, and even if the measures taken by EI somehow established abatement occurred within the meaning of the Nuisance Statute, a statutory construction the Court rejects, the record evidence would still overwhelmingly belie a finding of appropriate abatement occurred in this case. Thus, under the Nuisance Statute and the relevant authorities cited above, the State has established a right, both factually and legally, to close PP. This is especially true where, as here, a Consent Order of this Court already existed under which EI stipulated--by judicial decree--to prevent the exact conduct giving rise to this lawsuit and the Solicitor's Motion. (See Jan. 24, 2002 Consent Order.) Even if otherwise proper, the Court would still reject EI's assurances of self-policing when a prior Court Order failed to deter EI's conduct. EI, in that litigated Consent Order, affirmatively agreed to a defined acceptable course of conduct, a defined acceptable behavior in the venue and a defined level of affirmative duties it would undertake. Now, in light of both the degree and the nature of the evidence, EI has clearly crossed the lines it agreed to operate within and the lines that the

7 

applicable law allows. EI may not close its corporate eyes to the activities in its location at 805 Frontage Road and then claim blindness as a defense.

EI also argues the Nuisance Statute, as it is sought to be enforced in this case, violates the *First Amendment*, as an unconstitutional prior restraint on expressive activity. While premature to fully argue the issue, the Court rejects this argument at this point in the proceedings. EI's argument in this regard, by its own admission, appears to lack evidentiary support. (See, e.g., EI's Memo. in Opp., pp. 12-13, FN3 ("While it is too early to discern the motivation of the state....").¹⁵ Moreover, based upon the evidence and record so far, the Court finds the South Carolina Nuisance Statute, as applied here, does not implicate the *First Amendment* since the conduct it aims to penalize garners no *First Amendment* protection. See *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986).¹⁶

In granting the relief sought by the Solicitor's Motion, the Court notes the following to avoid any confusion:

- First, the Court's Order constitutes a purely temporary order based solely on the record to date. None of the findings herein constitute permanent or conclusive findings and Defendants retain their full rights to present any and all defenses at the trial on the merits. Similarly, none of the findings herein shall in any way be binding upon any of the parties at the time of the trial on the merits.
- Second, to date, none of the evidence submitted by the Solicitor reflects FRAI participated in the Prohibited Acts prompting the Solicitor to bring this action or file the instant Motion. The record evidence, to date, only reflects FRAI owned the real property where the Prohibited Acts allegedly occurred.
- Third, the trial of this case shall occur on an expedited basis. As soon as practicable, the Parties are directed to consult upon a timetable for completing discovery and, if possible,

¹⁵ If EI later unearths evidence supporting its claims of selective prosecution in violation of its *First Amendment* rights, such arguments remain available to EI for presentation at the trial on the merits.

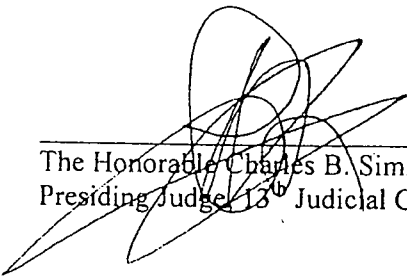
¹⁶ In *Arcara*, the United States Supreme Court upheld the closure of an adult bookstore used for prostitution under New York's Nuisance Statute because protected activities (i.e., bookselling) did not: "confer First Amendment coverage [so as] to defeat a valid statute aimed at penalizing and terminating illegal uses of premises..." (*Id.* at 707); see also *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 66 (1990) (Citing and following the analysis in *Arcara*.)

identify potential trial dates. Once completed, the Parties are directed to contact the presiding Administrative Judge to schedule a trial date consistent with this directive. Counsel for all parties have indicated the case will likely be ready for a trial on the merits within 90 days.

For the reasons set forth above, the Court **GRANTS** the Solicitor's Motion for a Temporary Injunction including the relief prayed for therein, subject only to the following clarifications:

- A. Defendants shall have forty-eight (48) hours following the issuance of this Order and its receipt by Defense Counsel to wind-down and cease, pending further Court Order, Platinum Plus's operations, as operated by Elephant, Inc., at 805 Frontage Road in Greenville, South Carolina 29615;
- B. After the forty-eight (48) hours set forth above, the Greenville County Sheriff's Office shall post a laminated Notice (size to be 11x14) on all exterior doors of 805 Frontage Road in substantially the same form as Attachment A;
- C. This Order shall remain in full, force and effect until: (1) a trial can be conducted on the merits of the above-captioned matter; or (2) the Court modifies this Order;
- D. Individuals found guilty of violating this Order shall be subject to the Court's contempt powers as required by S.C. Code §§ 15-43-30 & 15-43-70 and subject to a fine of up to one thousand dollars (\$1,000.00) or imprisonment up to six (6) months.

IT IS SO ORDERED.



The Honorable Charles B. Simmons, Jr.
Presiding Judge, 13th Judicial Circuit

Greenville, S.C.

May 6, 2015

ATTACHMENT A

Pursuant to Court Order, this business is closed until further Order. See, 2015-CP-23-02597.

Violation of this Order may result in contempt of court, including monetary fines and/or jail.

A copy of the Court Order may be obtained from the Greenville County Clerk of Court, 305 East North Street, Greenville, SC 29601.

A handwritten signature or set of initials, possibly 'CB', written in black ink at the bottom center of the page.

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH CIRCUIT
C.A. NO.: 2015-CP-23-02597

State of South Carolina on the relation)
Of William Walter Wilkins, III, Solicitor)
Of the Thirteenth Judicial Circuit,)

Plaintiff,)

Vs.)

Elephant Inc. and Frontage Road Assoc.,)
Inc.,)

Defendant)

AFFIDAVIT OF KENWOOD GAINES

The undersigned, under oath, deposes and states as follows:

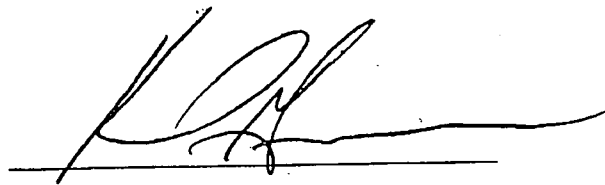
1. My name is Kenwood Gaines and I am the owner of Elephant, Inc. which operates the facility known as Platinum Plus at 850 Frontage Road, Greenville County, South Carolina, I am over the age of 18 and the statements set forth herein are made on my personal knowledge.
2. Platinum Plus has operated a gentlemen's club at this location for over 14 years. During that time period no employee of the business while engaged in their duties at the business has ever been charged with or convicted of lewdness, assignation, prostitution or repeated acts of unlawful possession or sale of controlled substances. To my knowledge no subcontractor, lessee or patron has likewise been charged or convicted while upon the premises of Platinum Plus.
3. Platinum Plus does not condone, allow or profit from any form of illegal or unlawful activity by its employees, patrons or lessees while on the premises of the business.
4. Over the course of the operation of the business if and when management became aware of any form of unlawful or illegal activity then the employee, patron or lessee are escorted from the premises and a record was made in the manager's log book and what we designate as the "black book" so that each manager and successive managers will have access to those persons who are not allowed upon the premises.
5. The Greenville County Sheriff's Office executed a search warrant on our property on March 27, 2015 and hand delivered to my local counsel a letter of same date which stated

"under SC Code Ann. Section 15-43-120 you have ten days to abate the nuisance. This will be your only notice." (See Ex. A) My attorney responded advising that we were unaware of any such alleged activity but would undertake an investigation and requesting that the Sheriff's Office and the Solicitor's Office share with us any information that they had which would in any way suggest that any unlawful, illegal or any other inappropriate activity was occurring and the names of those involved. (See Ex. B) No response or information was ever forthcoming.

6. While we do not have any information that would confirm or support the allegations made by the Greenville County Sheriff's Office and the Thirteenth Circuit Solicitors Office, immediately upon the execution of the search warrant on our premises on March 27, 2015 affirmative steps were taken to ensure that any such allegations could not occur in the future. Specifically, a meeting was held and all employees and lessees were reminded of the club's policies with regards to conduct and that no deviation would be tolerated. Additional employees were added to continuously monitor the Champagne area as well as the couch area to ensure compliance with the forgoing. The general manager has been replaced until such time as either our investigation is complete, information is provided by the GCSO or the disposition of their pending charges, any one charged has not been allowed back upon the premises.
7. Platinum Plus employed 53 full time employees at the time of the execution of the search warrant and an additional 481 lessees derive their income from its continued operation.
8. Despite numerous requests by my attorney for its return (See Ex. C) the Petitioner has in its possession the security camera DVR system and other documents. I am personally aware that they are attempting to submit one of the 672 hours of video contained on that DVR in support of their petition while not allowing us an equal opportunity to review and submit the other 671 hours which apparently does not support their contentions.
9. According to the affidavit submitted with the Petition this club has been under investigation for a period of 12 months and yet there has not been a single charge or conviction for any of the alleged conduct during that period of time nor was any charge filed alleging improper conduct prior to February of 2015. None of which was known to us until March 27, 2015.

10. Immediately upon my becoming aware of those allegations I requested my local counsel to seek documentation or evidence which would support the allegations, suspended all parties charged and removed the general manager pending review.
11. Platinum Plus serves over 100,000 patrons on an annual basis. There are presently contracts with 481 lessees who lease a space from the club. It is inevitable in an operation this size that you will occasionally encounter an employee, a patron or a lessee who violates the terms and conditions of their right to be upon the premises. We make every effort to monitor and control that behavior but everyone is expected to know the law and what is legal or illegal and to abide by our policies. When we do discover any one of the above violating our policies then they are, depending on the severity of the violation, either suspended or refused entry into the facility. A master list is kept in the manager's office for the purpose of ensuring that previous violators who have been banned from the premises are not allowed back on the facilities.
12. My company is in the business of selling food and alcohol. Other than a flat fee that is paid by each entertainer to lease a space for the purposes of practicing their profession my facility receives no income whatsoever from their interaction with the customers. I have no incentive to condone, ignore or promote illegal or improper behavior and every incentive to avoid any such activities as it would clearly endanger my opportunity to continue the operation of this business.
13. In calendar year 2014 this business paid in excess of \$118,000.00 in taxes, almost \$900,000.00 and purchased more than \$3,000,000.00 in goods and services from the local economy. At the time of the service of the search warrant upon my business we employed 53 full time employees and on any given day over 100 people were dependent upon this business for their livelihood.
14. After diligent inquiry of all of the management and employees of my company neither "Rob" or "Mark" or any other member of the Greenville County Sheriff's Office or representatives or employees of the Greenville County Solicitor's Office has entered or been upon our business premises from March 27, 2015 through the date of the signing of this Affidavit.

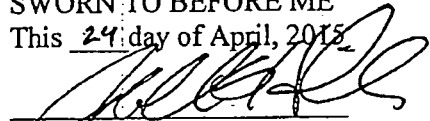
FURTHER AFFIANT SAYETH NOT.



Kenwood Gaines

SWORN TO BEFORE ME

This 24 day of April, 2015



Notary Public for SC

My commission expires: 5/19/17

EXHIBIT A

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

March 27, 2015

Frontage Road Associates, Inc
c/o Tom Schweitzer
103 Barfield Drive
Easley, SC 29642

Elephant, Inc
c/o Randall Hiller, Esq.
850-B Wade Hampton Blvd
Greenville, SC 29609

Elephant, Inc
c/o Vanseea Mascea
800 Bush River Road
Columbia, SC 29212

RE: Platinum Plus – Public Nuisance

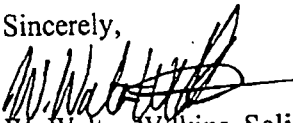
Notice to Property Owner & Business Owner:

It has come to the attention of the State of South Carolina, Office of the Solicitor, Thirteenth Judicial Circuit, that property owned or controlled by you is being used to foster and promote a public nuisance. Such property is reportedly being used for purposes of lewdness, prostitution and assignation. The business is popularly known as Platinum Plus is located at or near 805 Frontage Road, Greenville, South Carolina 29615.

This letter is an official notice to the property owner and business owner and its principals that the activity on the property known as Platinum Plus constitutes a public nuisance under the laws of the State of South Carolina and must be abated. The statutes involved are S.C. Code Ann. §15-43-10, et seq.

Under S.C. Code Ann. §15-43-120 you have ten days to abate the nuisance. This will be your only notice.

Sincerely,


W. Walter Wilkins, Solicitor
Thirteenth Judicial Circuit

WWW/smb

EXHIBIT B

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW

850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
EMAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

April 1, 2015

The Hon. W. Walter Wilkins
Greenville County Solicitors Office
305 E. North St.
Greenville, SC 29601

Re: Your Letter of March 27, 2015 addressed to Elephant, Inc.

Dear Walt:

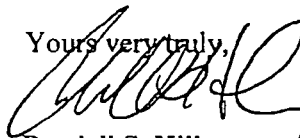
Please be advised that I represent Elephant, Inc. and have been asked to respond to your correspondence above referenced.

My client does not participate, profit, condone nor tolerate illegal or unlawful activities by any employee, lessees or patron upon its facilities. Indeed, the documents seized from my client are evidence of that fact as you will find contained within the manager's log a notation of any instance in which my client was satisfied that evidence existed of wrongful conduct and banning such individual from the premises.

If you are in possession of evidence that any person is or has engaged in any of the activities set forth in the aforementioned letter then please provide it to us immediately so that we may evaluate it and take such action as appropriate to insure that it does not occur in the future.

In the interim my client is conducting its own investigation into whether any improper or unlawful behavior has occurred and if found will be abated. In addition, my client has instituted additional procedures to ensure that no such alleged activity will reoccur.

Yours very truly,



Randall S. Hiller

RSH/ak

EXHIBIT C

Randall S. Hiller

From: Randall S. Hiller <rsh@rshpa.org>
Sent: Tuesday, April 14, 2015 10:46 AM
To: 'Culbreath, Andrew'
Subject: RE: Platinum

Andrew:

Any update on getting the DVR and other records back?

Randall S. Hiller
Randall S. Hiller, P.A.
Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: Culbreath, Andrew [mailto:ACulbreath@greenvillecounty.org]
Sent: Friday, April 10, 2015 9:51 AM
To: Randall S. Hiller
Subject: RE: Platinum

I'm checking on that now. There are some technical issues on getting the info copied, but I don't have all the details. I will be in touch with you shortly.

Andrew

From: Randall S. Hiller [mailto:rsh@rshpa.org]
Sent: Thursday, April 09, 2015 1:49 PM
To: Culbreath, Andrew
Subject: Platinum

Andrew:

How many more warrants have they got? It's like Platinum East over here, I'm seeing 3 entertainers a day, can't get anything else done and, most importantly, the wife's not too happy about it and I like keeping her happy.

On a more serious note can you tell me when we can get our DVR and paperwork back. They should have had ample opportunity to copy everything by now.

Randall S. Hiller
Randall S. Hiller, P.A.
Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

EXHIBIT C

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

March 27, 2015

Frontage Road Associates, Inc
c/o Tom Schweitzer
103 Barfield Drive
Easley, SC 29642

Elephant, Inc
c/o Randall Hiller, Esq.
850-B Wade Hampton Blvd
Greenville, SC 29609

Elephant, Inc
c/o Vanseea Mascea
800 Bush River Road
Columbia, SC 29212

RE: Platinum Plus – Public Nuisance

Notice to Property Owner & Business Owner:

It has come to the attention of the State of South Carolina, Office of the Solicitor, Thirteenth Judicial Circuit, that property owned or controlled by you is being used to foster and promote a public nuisance. Such property is reportedly being used for purposes of lewdness, prostitution and assignation. The business is popularly known as Platinum Plus is located at or near 805 Frontage Road, Greenville, South Carolina 29615.

This letter is an official notice to the property owner and business owner and its principals that the activity on the property known as Platinum Plus constitutes a public nuisance under the laws of the State of South Carolina and must be abated. The statutes involved are S.C. Code Ann. §15-43-10, et seq.

Under S.C. Code Ann. §15-43-120 you have ten days to abate the nuisance. This will be your only notice.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Walter Wilkins", is written over a horizontal line.

W. Walter Wilkins, Solicitor
Thirteenth Judicial Circuit

WWW/smb

EXHIBIT D



Hannah Metcalfe <hmetcalfe@mpalawfirm.com>

FW: Motion for Temporary Injunction CA# 2015CP2302597

1 message

Randall S. Hiller <rsh@rshpa.org>

Thu, Apr 23, 2015 at 3:24 PM

To: Hannah Metcalfe <hmetcalfe@malawfirm.com>

Randall S. Hiller

Randall S. Hiller, P.A.

Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

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From: Randall S. Hiller [<mailto:rsh@rshpa.org>]

Sent: Friday, April 17, 2015 3:17 PM

To: 'Culbreath, Andrew'; 'Lopez, Stephen'; 'Lane Davis (lane.davis@nelsonmullins.com)'; 'Wilkins, Walt'

Subject: RE: Motion for Temporary Injunction CA# 2015CP2302597

I was delivered a copy this afternoon. At this time I cannot state with certainty whether I will be counsel of record. However, given that the Plaintiff has seized all of my clients evidence, is using some portion of it in support of its motion, and has yet to return any of it I am satisfied that a hearing in that time frame would be fundamentally unfair. They have had possession and control of all this information since March 26 and yet expect a defense to be prepared in less than 4 days.

Randall S. Hiller

Randall S. Hiller, P.A.

Attorneys at Law

From: Lopez, Stephen
Sent: Friday, April 17, 2015 2:15 PM
To: Culbreath, Andrew; Lane Davis (lane.davis@nelsonmullins.com)
Subject: Motion for Temporary Injunction CA# 2015CP2302597

Gentlemen,

I spoke with Judge Simmons and he gave me two times that he would make himself available on Friday, April 24th, 2015 in Courtroom #8 to hear this Motion: 8:45 and 11:30. Please let me know which of these times will work for you and I will notify his scheduling clerk to put it on his roster for that day.

He did remark that he hoped the defendants could be served today so they would have plenty of time to prepare.

Please let me know if you have any questions or concerns or there is anything I additional I can do to assist you.

Best regards,

Steve

Stephen Lopez
Non-Jury Coordinator
Greenville County Clerk of Court
ph (864) 467-8546
fax (864) 467-8519
e-mail: njcoord@greenvillecounty.org

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850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

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From: Culbreath, Andrew [mailto:ACulbreath@greenvillecounty.org]
Sent: Friday, April 17, 2015 2:42 PM
To: Lopez, Stephen; Lane Davis (lane.davis@nelsonmullins.com); Wilkins, Walt
Cc: Randall S. Hiller
Subject: RE: Motion for Temporary Injunction CA# 2015CP2302597

Steve,

Please set the hearing for next Friday at 11:30am before Judge Simmons in Courtroom 8. We are in the process of serving the defendants now, and will provide them with formal notice of the hearing no later than Monday. I have copied Mr. Randall Hiller, attorney for Defendant Elephant, Inc., on this email as well.

Thank you for your assistance.

Andrew S. Culbreath
13th Judicial Circuit Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8282
aculbreath@greenvillecounty.org

EXHIBIT E



Hannah Metcalfe <hmetcalfe@mpalawfirm.com>

RE: State of South Carolina v. Elephant, Inc., et al/2015-CP-23-2597

1 message

Simmons, Judge Charles <CSimmons@greenvillecounty.org>

Wed, Apr 22, 2015 at 1:28 PM

To: Alison Kelley <ahk@rshpa.org>, "rstilwellj@sccourts.gov" <rstilwellj@sccourts.gov>, "Lopez, Stephen" <SLopez@greenvillecounty.org>

Cc: "Randall S. Hiller" <rsh@rshpa.org>, "hmetcalfe@malawfirm.com" <hmetcalfe@malawfirm.com>, "lane.davis@nelsonmullins.com" <lane.davis@nelsonmullins.com>, "Culbreath, Andrew" <ACulbreath@greenvillecounty.org>

Mr. Hiller,

I am in receipt of your letter. As you are aware, I am scheduled to hear probation revocation cases this Friday and agreed to hear the State's Motion for Temporary Injunction concerning your client at 11:30.

While I appreciate your position, as I read 15-43-40, the State has a right to request a hearing provided 3 days notice is given. Per 15-43-40, it appears that if the case is then continued at the request of the defendant, it seems that the Court is required to enter the temporary injunction during the time of the continuance.

I will certainly be open to hearing your request for a continuance on the record Friday and hearing the respective arguments relative to a continuance and issuance of an injunction.

Further, and as relayed to all counsel by Mr. Lopez, our non-jury coordinator, I will need a letter memo from all counsel stating the applicable law that will be relied upon at the hearing on Friday. I will need this by 5:00 p.m. Wednesday April 22, 2015.

Finally, upon my review of the file, I have concerns that alleged witness statements that are attached to the pleadings include names, addresses, telephone numbers and social security numbers and will address at Friday's hearing whether that information should or should not be redacted from the public record.

Judge Simmons

Charles B. Simmons, Jr., Judge

Greenville County Courthouse

305 East North Street, Suite 313

Greenville, SC 29601

Phone: (864) 467-8556

Fax: (864) 467-8401

From: Alison Kelley [mailto:ahk@rshpa.org]
Sent: Tuesday, April 21, 2015 5:03 PM
To: rstilwellj@sccourts.gov; Simmons, Judge Charles
Cc: 'Randall S. Hiller'; hmetcalfe@malawfirmssc.com; lane.davis@nelsonmullins.com; Culbreath, Andrew
Subject: Re: State of South Carolina v. Elephant, Inc., et al/2015-CP-23-2597

Judges:

Please see the attached correspondence from Mr. Hiller in the above matter.

Respectfully,

Alison H. Kelley
Paralegal to Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
(864) 232-0026
(864) 242-4692 Fax



This email is free from viruses and malware because avast! Antivirus protection is active.

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EXHIBIT F

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
E-MAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

April 21, 2015

*Via Electronic Mail and
U.S. Mail*

The Hon. Robin B. Stilwell
Chief Administrative Judge
305 E. North St.
Greenville, SC 29601

rstilwellj@sccourts.org

*Via Electronic Mail and
U.S. Mail*

The Hon. Charles B. Simmons, Jr.
305 E. North St.
Greenville, SC 29601

csimmons@greenvillecounty.org

*Re: State of South Carolina under the Relation of William Walter Wilkins, III,
Solicitor for the Thirteenth Judicial Circuit v. Elephant, Inc. and Frontage Road Association,
Inc.*

C.A. No.: 2015-CP-23-2597

Dear Judges:

Last Friday, April 17, 2015, a copy of the above referenced Complaint and attachments were delivered to my office at approximately 1:30pm. At 2:52 that afternoon I was copied with an email chain setting a hearing for a temporary injunction seeking to suspend the operation of a business the following Friday at 11:30am. I responded to that email that I had not been engaged to represent the Defendant and I communicated directly to Mr. Culbreath by telephone that I was not authorized to accept service but would attempt to get authorization if the Motion could be set in the normal course of business providing my client, and equally as importantly, myself adequate opportunity to prepare.

While I am cognizant that the century old statute under which this action has been brought requires only three days' notice it is, in my humble opinion, fundamentally unfair to utilize that language to attempt to gain an unfair advantage or deprive a Defendant of counsel of its choice and an adequate defense.

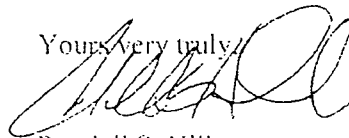
The Complaint alleges that this investigation has been ongoing for a period of one year. The Petitioner has had that length of time plus 22 days to prepare their Petition and their

supporting evidence in anticipation of a hearing. Under these circumstances there appears to be no other justification for Petitioner's urgency in setting the hearing other than to place the Defendants at a disadvantage. Equally disconcerting is the fact that the prosecution for those 22 days has had in its possession the security camera videos and documents essential to the preparation of a defense, a portion of which it intends to use in its case in chief, to which access has been denied the Defendants despite repeated requests for either copies or the return of the originals. As of the time of the writing of this letter none of that material has been returned. Surely if an expedited hearing were so necessary the Petitioner would have filed long before now.

This is not an insignificant matter. My client spends over four million dollars on taxes, goods, services and payroll annually in Greenville County. It has 53 full time employees and over 400 independent contractors who rely upon the operation of the business for their livelihood. The Petitioner's entire Complaint is based upon an "affidavit" that does not comply with any Rule and is replete with speculation, conclusions, hearsay and hearsay on hearsay. Accordingly, we would respectfully request not only an ample time to prepare but that a significant time be set aside for an evidentiary hearing and the taking of testimony whereupon the parties are afforded the right of cross examination.

I do not believe there has been proper service but we are obviously aware of the litigation and I have in fact agreed to accept representation of it in this matter along with my co-counsel, Hannah Rogers-Metcalf. We respectfully request that the Court schedule this for the next ordinary term of non-jury motions which I understand is scheduled for May 12. Just because a motion can be held within three days doesn't mean it should. Scheduling the motion on that week will allow for the provision of an adequate period of time to brief and argue very consequential decisions and provide the defense with no more opportunity to prepare than the Petitioner has already availed itself.

Yours very truly,



Randall S. Hiller

RSH/ak

CC:

Andrew Culbreath, Esq.

Lane Davis, Esq.

Hannah Rogers Metcalfe, Esq.

EXHIBIT G

METCALFE & ATKINSON, LLC

ATTORNEYS AT LAW

April 23, 2015

The Honorable Charles B. Simmons, Jr.
Greenville County Courthouse
305 E. North Street, Suite 313
Greenville, SC 29601

**Re: State of South Carolina on relation of William Walter Wilkins, III, Solicitor
of the Thirteenth Judicial Circuit v. Elephant, Inc. and Frontage Road Associates,
Inc., Case No.: 2015-CP-23-2597**

Dear Judge Simmons:

Your Honor previously requested a letter or memorandum detailing the legal issues to be addressed at tomorrow's hearing and we have provided that at the time requested as required. At the time we submitted our memorandum to Your Honor, however, the Plaintiff had not yet provided proof of service, so we submitted our Memorandum with a notation that we were reserving our right to object to service on behalf of our client Elephant, Inc.¹ We have since been provided a copy of the Plaintiff's "Affidavits of Service" and, upon review, would like to alert the Court to the fact that, based on the Affidavits provided by the Plaintiff, one of the two Defendants, Elephant, Inc., has not been properly served and, as a result, has not received the statutorily required notice of tomorrow's hearing.

"The principal object of service of process is to give notice to the defendant corporation of the proceedings against it." *Burriss Chemical, Inc. v. Daniel Const. Co.*, 251 S.C. 483, 487, 163 S.E.2d 618, 620 (1968). "Rule 4, SCRCP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995).

It is the Plaintiff's burden to demonstrate effective service – and proper notice of tomorrow's proceedings – on **both** named Defendants. At this point, it does not appear, based upon the multiple "Affidavits of Service" filed by the Plaintiff, that the Plaintiff has perfected service on the Defendant Elephant, Inc. (See Affidavits of Service Attached Hereto as Exhibit A.) The Affidavits show that the Plaintiff has attempted service, but do not demonstrate that service was perfected.

Rule 4(d)(8), SCRCP, sets forth the requirements for effective service of process by certified mail in relevant part:

¹ Counsel for Elephant, Inc. does not represent the other Defendant, Frontage Road Associates, Inc.

Service by Certified Mail. Service of a summons and complaint upon [a corporate] defendant . . . may be made . . . by registered or certified mail, return receipt requested and delivery restricted to the addressee. **Service is effective upon the date of delivery as shown on the return receipt.** Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. (Emphasis added)

The Plaintiff has only provided Affidavits showing that the Summons, Complaint, and Motion for Temporary Injunction were mailed, via certified mail, to the Defendant, Elephant, Inc. The Plaintiff has not, however, provided any proof that these documents have been received by the Registered Agent and has not provided the Court or counsel a copy of the Return Receipt showing effective service or the date of such service. As such, the Plaintiff has not met its burden of demonstrating effective service. Until service is perfected, the Court does not have personal jurisdiction over Elephant, Inc. Similarly, until service is perfected and proof of same is provided to the Court such that the date of actual service is known, Plaintiff cannot demonstrate to the Court that Elephant, Inc. has been provided the requisite notice of tomorrow's hearing as required by the law.

In addition, the Plaintiff has provided copies of additional "Affidavits of Service" stating that Mr. Randall Hiller was served with copies of the Summons, Complaint, and Motion for Temporary Injunction. Mr. Hiller, however, is not the registered agent of Elephant, Inc. and is not an agent of the corporation authorized to accept service on behalf of Elephant, Inc., a fact Mr. Hiller previously communicated in writing to counsel for the Plaintiff's last Friday, April 17, 2015. (See April 17, 2015 Email to Mr. Culbreath attached hereto as Exhibit B). See Section 15-9-210, S.C. Code of Laws ("A domestic business or nonprofit corporation's registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served.").² Therefore, the Plaintiff has similarly not met its burden of demonstrating effective alternative service on Mr. Hiller as some sort of agent for Elephant, Inc. such that the Court has personal jurisdiction over Elephant, Inc. or that Elephant, Inc. has been provided the requisite notice of tomorrow's hearing as required by the law.

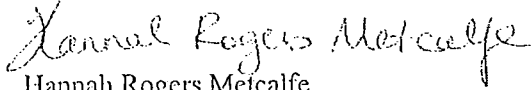
As we know the Court's time is limited tomorrow, we wanted to alert you to this serious defect in service prior to tomorrow's scheduled hearing as it appears that the Court would be unable to proceed with tomorrow's hearing or issue any ruling on the Motion for a Temporary

² Plaintiff also provided an "Affidavit of Service" showing service on Mr. Rick Zurich, the General Manager of Platinum Plus in Greenville. Pursuant to S.C. Code Section 15-9-210, this is also ineffective service on Elephant, Inc. as Mr. Zurich is not the registered agent of Elephant, Inc. Service on a manager is inadequate when, by Statute, there is a designated person for service. See S.C. Code of Laws Section 15-9-210.

April 23, 2015
Re: 2015-CP-23-2597
Page 3

Injunction with regard to Elephant, Inc. until such time as jurisdiction and proper notice of the hearing can be established.

Very truly yours,


Hannah Rogers Metcalfe
hmetcalfe@malawfirmssc.com

HRM/awr

cc: Lane Davis, Esq.
Walt Wilkins, Esq.
Andrew Culbreath, Esq.
Randall Hiller, Esq.

EXHIBIT A

STATE OF SOUTH CAROLINA) CLERK OF THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) GREENVILLE THIRTEENTH JUDICIAL CIRCUIT

PAUL B. WICKENSIMER

State of South Carolina)

On relation of William Walter)

Wilkins, III, Solicitor of the)

Thirteenth Judicial Circuit,)

Plaintiff,)

VS)

Elephant, Inc. and Frontage Road)

Associates, Inc.,)

Defendants.)

C.A. No. 2015-CP-23-02597

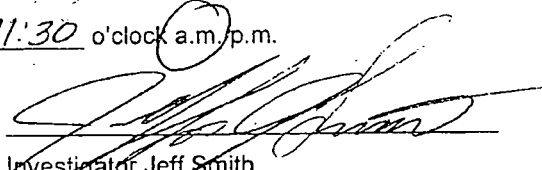
AFFIDAVIT OF SERVICE

PERSONALLY APPEARED BEFORE ME, Jeff Smith, Investigator for the 13th Circuit Solicitor, who is a duly sworn Law Enforcement Officer, does state that he did serve Randall S. Hiller, P.A., with the following documents and exhibits: Summons, Verified Petition with Exhibits, Motion for Temporary Injunction, Affidavit of Robert Curtis and Notice of Hearing.

Personally hand delivered to:

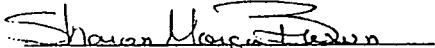
(X) Randall S. Hiller, 850 Wade Hampton Blvd., Greenville, SC

on the 20TH day of APRIL, 2015 at 11:30 o'clock a.m./p.m.


Investigator Jeff Smith

Sworn to and subscribed before me

This 21st day of April, 2015.



Notary Public for South Carolina

My Commission Expires: Dec 10, 2020

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina
On relation of William Walter
Wilkins, III, Solicitor of the
Thirteenth Judicial Circuit,
Plaintiff,

VS

Elephant, Inc. and Frontage Road
Associates, Inc.,

Defendants.

FILED - CLERK OF COURT
IN THE COURT OF COMMON PLEAS
GREENVILLE, SOUTH CAROLINA
PAUL B. WICKENSIMER

2015 APR 22 AM 10:18

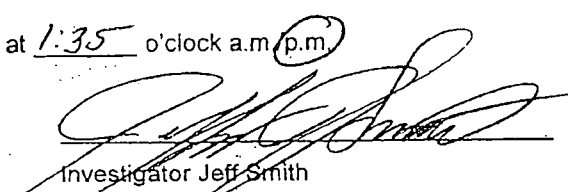
C.A. No. 2015-CP-23-02597

AFFIDAVIT OF SERVICE

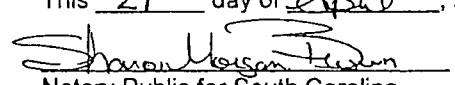
PERSONALLY APPEARED BEFORE ME, Jeff Smith, Investigator for the
13th Circuit Solicitor, who is a duly sworn Law Enforcement Officer, does state that he did
serve Randall S. Hiller, P.A., with the following documents and exhibits: Verified Petition
with Exhibits, Motion for Temporary Injunction, and Affidavit of Robert Curtis.
Personally hand delivered to:

(X) Randall S. Hiller, 850 Wade Hampton Blvd., Greenville, SC

on the 17TH day of APRIL, 2015 at 1:35 o'clock a.m./p.m.


Investigator Jeff Smith

Sworn to and subscribed before me
This 21st day of April, 2015.


Notary Public for South Carolina

My Commission Expires: Dec 10, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE CO. S.C.
PAUL S. WICKENSIMMER

State of South Carolina
On relation of William Walter Wilkins, III, Solicitor of the
Thirteenth Judicial Circuit,
Petitioner,

C.A. No. 2015-CP-23-02597

VS

Elephant, Inc. and Frontage Road
Associates, Inc.,

AFFIDAVIT OF SERVICE
BY MAIL

Defendants.

PERSONALLY APPEARED BEFORE ME, Robert Monroe

_____, an employee of the Greenville County Solicitor's Office, who does state that he served Defendant Elephant, Inc. with a copy of the following documents and exhibits: Summons, Verified Petition with Exhibits, Motion for Temporary Injunction, Affidavit of Robert Curtis, via Certified Mail, return receipt requested, by placing said documents in the United States Mail, with proper postage affixed, and addressed to the following registered agent and address.

(X) Elephant, Inc., c/o Vanseea Mascea, 800 Bush River Road, Columbia, SC 29210

on the 17 day of April, 2015

Robert Monroe

Robert Monroe

Sworn to and subscribed before me
This 22nd day of April, 2015.

Sharon Morgan Brown
Notary Public for South Carolina
My Commission Expires: Dec 10, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
FILED - CLERK OF COURT)
COUNTY OF GREENVILLE) GREENVILLE CO. S.C.
PAUL B. WICKENSIMER)

State of South Carolina)
On relation of William Wilkins, III, Solicitor of the)
Thirteenth Judicial Circuit,)
Plaintiff,)

C.A. No. 2015-CP-23-02597

VS

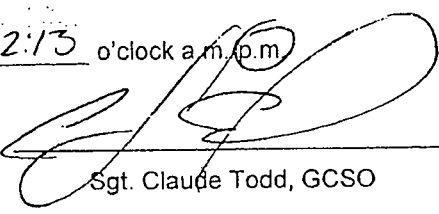
AFFIDAVIT OF SERVICE

Elephant, Inc. and Frontage Road)
Associates, Inc.,)
Defendants.)

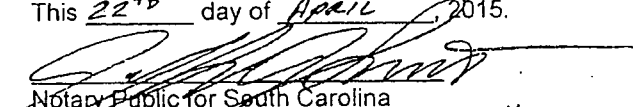
PERSONALLY APPEARED BEFORE ME, Sergeant Claude Todd, a duly sworn Law Enforcement Officer with the Greenville County Sheriff's Office, who does state that he did serve Mr. Rick Zurich, General Manager of Platinum Plus (Greenville), with the following documents and exhibits: Summons, Verified Petition with Exhibits, Motion for Temporary Injunction, Affidavit of Robert Curtis, and the Notice of Hearing.
Personally hand delivered to:

(X) Rick Zurich 805 Frontage Road, Greenville, SC 29615

on the 20TH day of APRIL, 2015 at 2:13 o'clock a.m./p.m.


Sgt. Claude Todd, GCSO

Sworn to and subscribed before me
This 22ND day of APRIL, 2015.


Notary Public for South Carolina
My Commission Expires: MAY 15TH 2018

STATE OF SOUTH CAROLINA) IN THE COURT COMMON PLEAS
FILED - CLERK OF COURT) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE) GREENVILLE CO. S.C.
PAUL B. WICKENSIMER)

State of South Carolina)
On relation of William W. Wilkins, III, Solicitor of the)
Thirteenth Judicial Circuit,)
Petitioner,)

C.A. No. 2015-CP-23-02597

VS

Elephant, Inc. and Frontage Road)
Associates, Inc.,)
Defendants.)

AFFIDAVIT OF SERVICE
BY MAIL

PERSONALLY APPEARED BEFORE ME, Robert Monroe

_____, an employee of the Greenville County Solicitor's Office, who does state that he served Defendant Frontage Road Associates, Inc. with a copy of the following documents and exhibits: Summons, Verified Petition with Exhibits, Motion for Temporary Injunction, Affidavit of Robert Curtis, via Certified Mail, return receipt requested, by placing said documents in the United States Mail, with proper postage affixed, and addressed to the following registered agent and address.

(X) Frontage Road Associates, Inc. c/o Tom Schweitzer, 103 Barfield Drive, Easley SC 29642

on the 17 day of April, 2015.

Robert Monroe

Robert Monroe

Sworn to and subscribed before me
This 22nd day of April, 2015.

Sharon M. B. B.

Notary Public for South Carolina

My Commission Expires: Dec 10, 2020

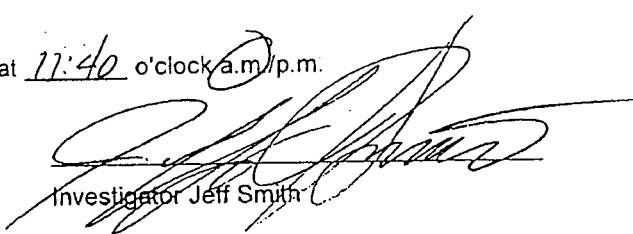
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FILED - CLERK OF THE THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE) GREENVILLE CO. S.C.
) PAUL B. WICKENSIMER
 State of South Carolina)
 On relation of William Walter)
 Wilkins, III, Solicitor of the) 2015 APR 22 AM 10 18
 Thirteenth Judicial Circuit,) C.A. No. 2015-CP-23-02597
 Plaintiff,)
)
 VS)
)
 Elephant, Inc. and Frontage Road)
 Associates, Inc.,)
)
 Defendants.)

AFFIDAVIT OF SERVICE

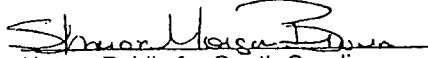
PERSONALLY APPEARED BEFORE ME, Jeff Smith, Investigator for the 13th Circuit Solicitor, who is a duly sworn Law Enforcement Officer, does state that he did deliver a Notice of Hearing to Tom Schweitzer, registered agent for the defendant Frontage Road Associates, Inc. I spoke with Tom Schweitzer on the phone and at his direction, I left the Notice of Hearing with the following person.
 Personally hand delivered to:

(X) Melissa R. Duffie, 103 Barfield Dr., Easley, SC 29642

on the 20TH day of APRIL, 2015 at 11:40 o'clock a.m./p.m.


 Investigator Jeff Smith

Sworn to and subscribed before me
 This 21st day of April, 2015.


 Notary Public for South Carolina
 My Commission Expires: Dec 10, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

State of South Carolina
On relation of William Walter
Wilkins, III, Solicitor of the
Thirteenth Judicial Circuit,
Plaintiff,

2015 APR 22 AM 10 18

C.A. No. 2015-CP-23-02597

VS

Elephant, Inc. and Frontage Road
Associates, Inc.,

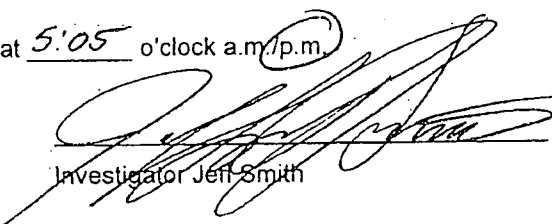
Defendants.

AFFIDAVIT OF SERVICE

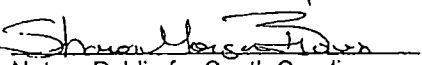
PERSONALLY APPEARED BEFORE ME, Jeff Smith, Investigator for the
13th Circuit Solicitor, who is a duly sworn Law Enforcement Officer, does state that he did
serve Tom Schweitzer, registered agent for the defendant Frontage Road Associates,
Inc., with the following documents and exhibits: Summons, Verified Petition with
Exhibits, Motion for Temporary Injunction, and Affidavit of Robert Curtis.
Personally hand delivered to:

(X) Tom Schweitzer, 103 Barfield Dr., Easley, SC 29642

on the 17TH day of APRIL, 2015 at 5:05 o'clock a.m./p.m.


Investigator Jeff Smith

Sworn to and subscribed before me
This 21st day of April, 2015.


Notary Public for South Carolina

My Commission Expires: Dec 10, 2020

EXHIBIT B



Hannah Metcalfe <hmetcalfe@mpalawfirm.com>

FW: Motion for Temporary Injunction CA# 2015CP2302597

Randall S. Hiller <rsh@rshpa.org>
To: Hannah Metcalfe <hmetcalfe@malawfirm.com>

Thu, Apr 23, 2015 at 3:24 PM

Randall S. Hiller

Randall S. Hiller, P.A.

Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

CONFIDENTIAL & PRIVILEGED

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From: Randall S. Hiller [<mailto:rsh@rshpa.org>]
Sent: Friday, April 17, 2015 3:17 PM
To: 'Culbreath, Andrew'; 'Lopez, Stephen'; 'Lane Davis (lane.davis@nelsonmullins.com)'; 'Wilkins, Walt'
Subject: RE: Motion for Temporary Injunction CA# 2015CP2302597

I was delivered a copy this afternoon. At this time I cannot state with certainty whether I will be counsel of record. However, given that the Plaintiff has seized all of my clients evidence, is using some portion of it in support of its motion, and has yet to return any of it I am satisfied that a hearing in that time frame would be fundamentally unfair. They have had possession and control of all this information since March 26 and yet expect a defense to be prepared in less than 4 days.

Randall S. Hiller

Randall S. Hiller, P.A.

Attorneys at Law
850 Wade Hampton Blvd.

Greenville, S.C. 29609
(864) 232-0026

CONFIDENTIAL & PRIVILEGED

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From: Culbreath, Andrew [mailto:ACulbreath@greenvillecounty.org]
Sent: Friday, April 17, 2015 2:42 PM
To: Lopez, Stephen; Lane Davis (lane.davis@nelsonmullins.com); Wilkins, Walt
Cc: Randall S. Hiller
Subject: RE: Motion for Temporary Injunction CA# 2015CP2302597

Steve,

Please set the hearing for next Friday at 11:30am before Judge Simmons in Courtroom 8. We are in the process of serving the defendants now, and will provide them with formal notice of the hearing no later than Monday. I have copied Mr. Randall Hiller, attorney for Defendant Elephant, Inc., on this email as well.

Thank you for your assistance.

Andrew S. Culbreath

13th Judicial Circuit Solicitor's Office

Greenville County Courthouse

305 East North Street, Suite 325

Greenville, SC 29601

(864) 467-8282

aculbreath@greenvillecounty.org

From: Lopez, Stephen

Sent: Friday, April 17, 2015 2:15 PM

To: Culbreath, Andrew; Lane Davis (lane.davis@nelsonmullins.com)

Subject: Motion for Temporary Injunction CA# 2015CP2302597

Gentlemen,

I spoke with Judge Simmons and he gave me two times that he would make himself available on Friday, April 24th, 2015 in Courtroom #8 to hear this Motion: 8:45 and 11:30. Please let me know which of these times will work for you and I will notify his scheduling clerk to put it on his roster for that day.

He did remark that he hoped the defendants could be served today so they would have plenty of time to prepare.

Please let me know if you have any questions or concerns or there is anything I additional I can do to assist you.

Best regards,

Steve

Stephen Lopez

Non-Jury Coordinator

Greenville County Clerk of Court

ph (864) 467-8546

fax (864) 467-8519

e-mail: njcoord@greenvillecounty.org

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EXHIBIT H

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina on the relation of
William Walter Wilkins, III, Solicitor of the
Thirteenth Judicial Circuit,

Plaintiffs,

vs.

Elephant, Inc. and Frontage Road Associates,
Inc.

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2015-CP-23-02597

**DEFENDANT, ELEPHANT, INC.'S
RESPONSE TO PLAINTIFF'S
ARGUMENT SUMMARY
(Service of Process)**

FILED-COURT OF COMMON PLEAS
GREENVILLE COUNTY
PAUL B. WILKINS
JAN 23 2015
PM 4 55

As Defendant, Elephant, Inc. ("EI") previously explained to the Court in its letter of April 23rd, the Plaintiff has the burden to establish personal jurisdiction over EI. The Plaintiff has not, and cannot, meet this burden. The Plaintiff cannot meet this burden because the Plaintiff has not effectuated valid service on EI.

As an initial matter, the Plaintiff is correct that "[s]ervice may be made upon a corporation by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." Rule 4(d)(3). *See Roche v. Young Bros. of Florence*, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995) ("Service on a corporation may be made by hand delivering a copy of the summons and complaint to an officer of the corporation or to an authorized agent of the corporation."). "In order to be effective, service must be made on an **actual agent**." *Brown v. Carolina Medicine*, 348 S.C. 569; 560 S.E.2d 624 (2001) (emphasis added); *Hammond v. Honda Motor Co.*, 128 F.R.D. 638, 643 (D.S.C. 1989). SCRCP 4(d)(1),

like its federal counterpart, Rule 4(d)(1) of the Federal Rules of Civil Procedure, provides for service upon an agent only if authorized by appointment or by law. *Moore v. Simpson*, 322 S.C. 518, 523 (Ct. App. 1996).

In determining whether an alleged agent has authority to receive process for a defendant, South Carolina courts have consistently concluded:

the courts must look to the circumstances surrounding the relationship and find authority which is either express or implied from the type of relationship between the defendant and the alleged agent. Claims by one to possess authority to receive process or actual acceptance of process by an alleged agent will not necessarily bind the defendant. Rather, there must be evidence the defendant intended to confer such authority.

Id. (emphasis added) (construing service upon an agent under Rule 4(d)(1), SCRCP).

"Without specific authorization to receive process, service is not effective when made upon an employee of the defendant, such as a secretary." *Id.* at 523-24, 473 S.E.2d at 67. "Not every employee of a corporation is an "agent" of the corporation for the purposes of services of process. If the employee in question is not a managing or general agent, the question is whether the individual possessed "specific authorization to receive process." *Bage v. Southeastern Roofing* 373 S.C. 457 (Ct. App. 2007) (quoting *Brown v. Carolina Emergency Physicians, P.A.*, 348 S.C. 569, 583-84 (Ct. App. 2001). Actual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant's agent for some purpose does not necessarily mean that the person has authority to receive process. *Moore*, 322 S.C. at 523 (internal citations omitted); accord *Hamilton v. Davis*, 300 S.C. 411, 414 389 S.E.2d 297, 299 (Ct. App. 1990).

The Plaintiff directs the Court to *Schenk v. National Health Care, Inc.* 322 S.C. 316, 471 S.E.2d 736 (Ct. App. 1996) to support the incorrect contention that service has been effected on

EI. *Schenk* does not apply to the facts at hand. In *Schenk*, the process server personally served papers on the company office manager, Carol Grant, who assured the process server that she was authorized to accept process. Based upon her role as the office manager at the corporate headquarters and her representation that she was authorized to accept service, the court found Carol Grant was a managing agent for the defendant. Thus, in *Schenk*, the Court found that the Defendant intended to confer on Carol Grant the authority to receive process.

In this case, the Plaintiff did not serve EI's office manager at its corporate office. Here, the process server served Rick Zurich, the Day Manager for the Greenville club location. Unlike Carol Grant in *Schenk*, Mr. Zurich is not a general manager. In fact, he is not even the senior manager for the Greenville club location, but reports to the Night Manager. See Affidavit of Mr. Kevin Ford attached hereto as Exhibit A. Unlike Carol Grant in the *Schenk* case, Mr. Zurich was not authorized to accept service of process. See Affidavit of Mr. Zurich attached hereto as Exhibit B; see also Affidavit of Mr. Kevin Ford. Mr. Zurich did not believe he was authorized to accept service. See Affidavit of Mr. Zurich. EI has never told Mr. Zurich he was authorized to accept service. See Affidavit of Mr. Kevin Ford. Mr. Zurich did not tell the process server he was authorized to accept service. See Affidavit of Mr. Zurich.

Even if, as Plaintiff's process server alleges in his affidavit, Mr. Zurich represented that he would get the papers "to the people who need[ed] it", service was still invalid as Plaintiff has presented no evidence that EI intended to confer on Mr. Zurich the authority to receive process. See e.g. *Redding v. Sun Printing, Inc.* 2013 U.S. Dist. Lexis 69537 (D.S.C. 2013, Childs, J.) (attached hereto for reference); see also Wright & Miller, Federal Practice and Procedure Civil 3d Section 1097 (2002) ("The federal courts have held that claims by an agent of having authority to receive process or the fact that an agent actually accepts process is not enough to

bind the defendant to the court's jurisdiction; there must be evidence that the defendant intended to confer the authority upon the agent...").

Plaintiff's most recent submission to the Court appears to imply that the Court should assume personal jurisdiction because the Plaintiff made a good-faith effort to effectuate valid service upon EI. To that end, the Plaintiff has supplied Affidavits of alleged service on Mr. Hiller and Affidavits of alleged service by certified mail on the registered agent.¹ And, most recently, the Plaintiff has produced affidavits documenting the brief attempt to serve the registered agent, including a hearsay statement from an unidentified postal worker that alleges someone had refused to sign for the certified mail containing the summons and complaint which was placed in the mail to the registered agent April 17th. This argument falls short.

By its own admission, Plaintiff has been investigating EI's location in Greenville for over a year. At the conclusion of that investigation, Plaintiff spent a significant amount of time preparing for this civil action, which was evidenced by the level of preparation demonstrated by counsel at the preliminary hearing. The Plaintiff had full control of the date of filing of the complaint as well as full control over the scheduling of the initial hearing. In fact, the email correspondence previously submitted to the Court demonstrates that Plaintiff, after spending months preparing this lawsuit, personally selected the date for the hearing, ostensibly for the sole purpose of limiting the amount of time Plaintiff had to respond to the allegations of the State. Plaintiff handpicked the date for the hearing, prior to actually serving the Plaintiff, boldly stating "We are in the process of serving the defendants now, and will provide them with formal notice of the hearing no later than Monday".

¹ Plaintiff's attempt to serve Defendant by serving Defendant's attorney does not satisfy Rule 4(h) and is also not proper service. *See, e.g., Sain v. HSBC Mortgage Services, Inc.* 2009 U.S. Dist. Lexis 77309 (D.S.C. Aug. 28, 2009).

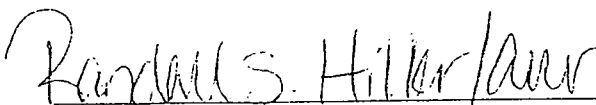
Plaintiff could have easily chosen a later date for the hearing so as to allow sufficient time to effectuate service on both defendants. Plaintiff did not. Instead, on April 17th, Plaintiff selected April 24th, just one week later, as the date of the hearing on the motion for the preliminary injunction, confidently assuring the Court it would “will provide [Defendants] with formal notice of the hearing no later than Monday”. Then, once the hearing had been set, the Plaintiff apparently alerted the media of the hearing date and time before EI had even been served with notice of the hearing.

In the end, Plaintiff's bold gamble did not pay off. The Plaintiff was not able to effectuate service on EI. In fact, Plaintiff still has not properly served EI as of today's date and does not appear to be attempting to remedy the lack of proper service. Nonetheless, EI insisted on pushing ahead with the hearing as scheduled even after being alerted to the defect by counsel for EI. Of course, the most prudent course of conduct, and the proper one under the Rules of Civil Procedure, would have been for the Plaintiff to agree to reschedule the preliminary hearing until such time as service could be effectuated or, if Plaintiff was ultimately unable to serve a registered or authorized agent of EI, until the Plaintiff could petition the court to allow some form of alternative service. Unfortunately, this is not what happened. Instead, the Plaintiff pushed ahead with its motion for a preliminary injunction with cavalier disregard for the fact that this Court did not yet have personal jurisdiction over one of the Defendants. What is a small detail like jurisdiction when the Plaintiff's counsel is ready, the media is primed, and the Plaintiff hopes to benefit from the intentionally shortened time period provided the Defendants to respond to the request for a temporary injunction?

Personal jurisdiction over a defendant is not a small detail. Proper service of process is important and required by the Rules. This is especially true when the Plaintiff is seeking, on

extremely short notice, a temporary and permanent injunction that would shut down the entire operation of EI's Greenville location. Plaintiff has presented no evidence that it has effectuated proper service on EI. Plaintiff has not met its burden of establishing that the court has personal jurisdiction over EI. EI has not been properly served and, until it is properly served, this Court does not have personal jurisdiction over EI.

Respectfully submitted,



Randall S. Hiller, SC Bar# 2513

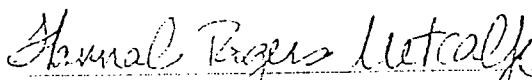
RANDALL S. HILLER, P.A.

850B Wade Hampton Blvd.

Greenville, SC 29609

(864) 232-0026 Telephone

(864) 242-4692 Facsimile



Hannah Rogers Metcalfe, SC Bar #73046

METCALFE & ATKINSON, LLC

9 Toy Street

Greenville, SC 29601

(864) 214-2319 Telephone

(864) 214-3067 Facsimile

Attorneys for Defendant, Elephant, Inc.

April 29, 2015
Greenville, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I have served all counsel of record with a copy of the foregoing
**DEFENDANT, ELEPHANT, INC.'S RESPONSE TO PLAINTIFF'S ARGUMENT
SUMMARY (Service of Process)** this 27 day of April, 2015 by placing a copy in the United
States mail, postage prepaid, and addressed as follows:

Andrew Culbreath
305 E. North Street, Suite 325
Greenville, SC 29601

Lane Davis
Poinsett Plaza
9th Floor
104 S. Main Street
Greenville, SC 29601

Walt Wilkins
305 E. North Street, Suite 325
Greenville, SC 29601

Oscar W. Bannister
Bannister, Wyatt, and Stalvey
401 Pettigru Street
Greenville, SC 29601

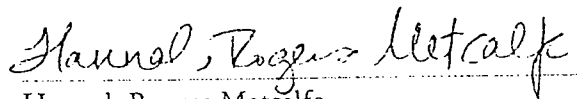

Hannah Rogers Metcalfe

EXHIBIT A

STATE OF SOUTH CAROLINA)
PLEAS)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON
THIRTEENTH CIRCUIT
C.A. NO.: 2015-CP-23-02597

State of South Carolina on the relation)
Of William Walter Wilkins, III, Solicitor)
Of the Thirteenth Judicial Circuit,)

Plaintiff,)

Vs.)

Elephant Inc. and Frontage Road Assoc.,)
Inc.,)

Defendant)

AFFIDAVIT OF KEVIN FORD

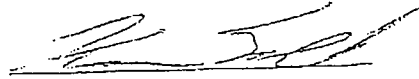
The undersigned, being duly sworn, states as follows:

- My name is Kevin Ford and I am the director of operations of Ken Wood Enterprises which owns Elephant, Inc. and I have held that position for 7 years. My responsibilities include supervision of management, including hiring and firing, at the location known as Platinum Plus in Greenville, South Carolina.
- EI operates in multiple locations, including Greenville, South Carolina. Our corporate office is not located in Greenville, South Carolina. Our Greenville location is just one of many locations owned by EI and operates as an adulated entertainment nightclub.
- Rick Zurich is currently employed as the Day Manager for EI's Greenville, South Carolina location. He is not the general manager of the Greenville location. He is not a manager of the corporation.
- Mr. Zurich reports to, and is supervised by, the Night Manager of the Greenville, South Carolina location. As the majority of the business conducted at our Greenville location occurs in the night hours, the Night Manager is the person tasked with the real authority and responsibilities at the Greenville, location, however, none of the Greenville employees are considered general or corporate

managers of Elephant, Inc.

- Mr. Zurich has no authority hire or fire employees. Mr. Zurich has no authority to enter into contracts or bind the corporation in any way.
- Most importantly, Mr. Zurich does not have the authority to accept service of process or to accept service of legal papers of any fashion. Mr. Zurich has never had the authority to accept service of process on behalf of EI.
- Mr. Zurich was not authorized to accept service of process in this Action.
- Other than the attempt to serve process on Mr. Zurich, who is not an officer or manager of EI and who was not authorized to accept such service, no other employee or agent of EI has been served with a copy of the Summons and Complaint in this Action as of the date of this Affidavit.
- The registered agent for the corporation has not been served with a copy of the Summons and Complaint in this Action.

FURTHER AFFIANT SAYETH NOT.


Kevin Ford

SWORN TO BEFORE ME

This 28 day of April 2015

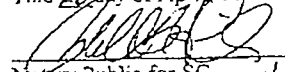

Notary Public for SC
My commission expires: 5/17/19

EXHIBIT B

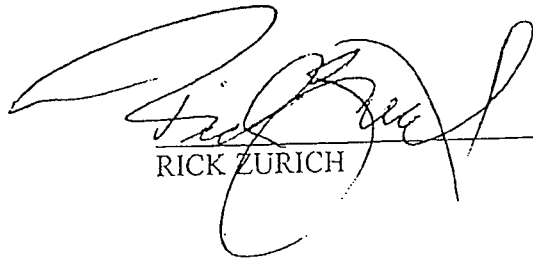
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH CIRCUIT
COUNTY OF GREENVILLE	)	C.A. NO.: 2015-CP-23-02597
State of South Carolina on the relation	)	
Of William Walter Wilkins, III, Solicitor	)	
Of the Thirteenth Judicial Circuit,	)	
	)	
Plaintiff,	)	
Vs.	)	AFFIDAVIT OF RICK ZURICH
	)	
Elephant, Inc. and Frontage Road Assoc.,	)	
Inc.,	)	
Defendant	)	
	)	

PERSONALLY APPEARED BEFORE ME, being duly sworn, testifies and sayeth:

1. My name is Rick Zurich and I am the Day Manager of the Platinum Plus in Greenville, South Carolina. This is one of three Platinum Plus locations in the state of South Carolina.
2. I am an employee of Elephant, Inc.
3. I am not and never have been the registered agent of Elephant, Inc.
4. I am not an officer of the Elephant, Inc. corporation.
5. I am not authorized to accept service of legal documents, summonses, notices, or other pleadings on behalf of Elephant, Inc.
6. I have never been authorized to accept service of legal documents, summonses, notices, or pleadings on behalf of Elephant, Inc.
7. I have never been informed by the management of Elephant, Inc. that I am authorized to accept service of legal documents, summonses, notices, or pleadings on behalf of Elephant, Inc.

8. I have never represented to anyone that I am authorized to accept service of
legal documents, summonses, notices, or pleadings on behalf of Elephant, Inc.
9. I did not tell the process server who served me with the summons & complaint
in this case that I was authorized to accept service.

FURTHER, AFFIANT SAYETH NOT.


RICK ZURICH

SWORN TO BEFORE ME
this 24 day of April, 2015.

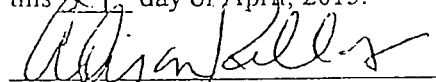

Notary Public for South Carolina
My commission expires: 10-25-15

EXHIBIT I

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No. 2015-CP-23-02597

State of South Carolina on the relation of
William Walter Wilkins, III, Solicitor of
the Thirteenth Judicial Circuit

Respondent

v.

Elephant, Inc. and Frontage Road
Associates, Inc.

Defendants

Of which Elephant, Inc. is the Appellant.

NOTICE OF APPEAL

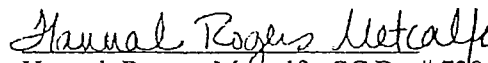
Elephant, Inc. hereby appeals the Order granting Respondent's Motion for Temporary Injunction issued by the Honorable Charles B. Simmons, Jr. dated May 6, 2015. Appellant received written notice of entry of this Order on May 6, 2015.

May 6, 2015

Other Counsel of Record:

Lane Davis
Poinsett Plaza, 9th Floor
104 S. Main Street
Greenville, SC 29601

Walt Wilkins, III
305 E. North Street, Suite 325
Greenville, SC 29601


Hannah Rogers Metcalfe, SC Bar# 73046
Courtney C. Atkinson, SC Bar# 71992
METCALFE & ATKINSON, LLC
9 Toy Street
Greenville, SC 29601
(864) 214-2319 Telephone
(864) 214-3067 Facsimile

RECEIVED
MAY 06 2015
SC Court of Appeals

Andrew Culbreath
305 E. North Street, Suite 325
Greenville, SC 29601

Oscar W. Bannister
PO Box 10007
Greenville, SC 29603

Randall S. Hiller, SC Bar# 2513
RANDALL S. HILLER, P.A.
850B Wade Hampton Blvd.
Greenville, SC 29609
(864) 232-0026 Telephone
(864) 242-4692 Facsimile

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

RECEIVED

MAY 06 2015

SC Court of Appeals

State of South Carolina on the relation of
William Walter Wilkins, III, Solicitor of
the Thirteenth Judicial Circuit,

C.A. No.: 2015-CP-23-02597

Plaintiff,

vs.

Elephant, Inc. and Frontage Road
Associates, Inc.,

**ORDER GRANTING TEMPORARY
INJUNCTION**

Defendants.

The Solicitor of the Thirteenth Circuit ("Solicitor") brought the present civil action pursuant to S.C. Code § 15-43-10 *et seq.* ("Nuisance Statute") on behalf of the State of South Carolina ("State"). The action was filed April 17, 2015. As allowed under the Nuisance Statute, the Solicitor also filed a motion seeking a temporary injunction pursuant to S.C. Code § 15-43-30 ("Motion") seeking to close the sexually oriented business operated in Greenville County by Elephant, Inc ("EI") and known as "Platinum Plus" ("PP"). Frontage Road Associates, Inc. owns the real estate of which EI is a tenant. A hearing was conducted on the Solicitor's Motion on April 24, 2015. All parties appeared and were represented by well prepared and zealous counsel. Understanding the importance of the issues to all parties and the short time frame in which Defendants' counsel had to prepare for the hearing held April 24, 2015, the Court allowed all parties to submit post-motion briefs. The Court has reviewed all pre- and post-motion submissions.



As an initial matter, the Court addresses the challenges to service of process ("Service") raised by Defendant Elephant, Inc. ("EI").¹ The record evidence reflects the Solicitor first attempted Service upon the registered agent of EI as identified by records on file with the South Carolina Secretary of State. (See R. Monroe Aff.; J. Smith Aff., ¶¶3-8.)² The Solicitor contends, as stated in the affidavit, that such Service was refused by the individuals encountered at the address of EI's registered agent. (*Id.*)

When Service upon EI's registered agent was not effected, the Solicitor directed the delivery of Service to the manager then in charge of EI's Greenville location at 805 Frontage Road in Greenville ("Subject Property").³ (See Todd Aff., ¶¶3-4.) The Greenville County Sheriff's Office ("GCSO") thereafter served an individual named Robert Zurich ("Zurich"). (*Id.* at 8; 4/29/2015 EI Opp. Brief, p. 3.). Accordingly, the initial issue before the Court is whether service upon Zurich constitutes proper service on EI such that this Court has personal jurisdiction over EI.

Sergeant Claude Todd of GCSO personally served Zurich on April 20, 2015 at the PP location at 805 Frontage Road, Greenville, SC. (Todd Aff., ¶8.)⁴ Upon arrival at the Subject Property, Sergeant Todd's affidavit reflects he asked to speak "to whomever was in charge." (*Id.* at 4.) Zurich then "stepped forward and identified himself as the manager in charge" and confirmed he would deliver the paperwork to the people who needed it. (Todd Aff., ¶9.)

¹ Such arguments only relate to EI. During the April 24, 2015 hearing, Defendant Frontage Road Associates, Inc. ("FRAI") acknowledged the Solicitor properly served FRAI. Counsel for EI appeared but did not waive their client's objection to service and personal jurisdiction.

² The registered agent for EI on file with the Secretary of State is Vanseca Mascea at 800 Bush River Road in Columbia, South Carolina.

³ The Subject Property is the site where the acts and omissions giving rise to this lawsuit allegedly occurred.

⁴ The legal paperwork served on EI included: the summons, the verified petition with exhibits, the motion for a temporary injunction, the Curtis Affidavit, and the notice of hearing. (Todd Aff., ¶7.)

Affidavits of Zurich and Kevin Ford, both employees of EI, assert that, while Zurich may have been a "day manager", he was not authorized to accept service on behalf of EI.

The South Carolina Rules of Civil Procedure authorize Service on a corporation's "managing or general agent." Rule 4(d)(3), SCRCP. Based upon the record evidence and the holding of *Schenck v. National Health Care*, 471 S.E.2d 736, 737-38 (Ct. App. 1996), the Court finds under the unique facts of this case that Zurich was held out by EI as, and in fact constituted, a "managing or general agent" of EI within the meaning of Rule 4(d)(3), SCRCP. Accordingly, I find that the Solicitor properly served EI through the person on-site at PP who identified himself as the proper person to accept service. Thus, I find that this Court has jurisdiction over EI.

The Court now addresses the merits of the Solicitor's Motion. As noted *supra*, the Thirteenth Circuit Solicitor's Office, a governmental entity, brought the instant Motion pursuant to South Carolina Code § 15-43-30. The Court must, therefore, look to the Nuisance Statute to determine whether temporary injunctive relief should issue. *See, e.g., Cnty. Of Richland v. Simpkins*, 560 S.E.2d 902, 904 (Ct. App. 2002) (Holding modified in part on other grounds). EI argues that the common law test for issuance of injunctive relief applies since the Nuisance Statute does not outline specific conditions or the analysis the court is to apply. However, I find that ordinary preliminary injunction standards as set forth in common law cases do not apply since the State is proceeding under a specific statute enacted by our legislature. (*Id.*)⁵ The analysis thus initially involves: (1) determining whether the Nuisance Statute covers the situation in the present case; and (2) whether the Solicitor has satisfactorily established a violation of the Nuisance Statute (*Id.*; *see also* FNS.).

⁵See also *City of Columbia v. Pick-a-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000); 42 AM. JUR. 2D *Injunctions* §25 (2015) ("A statute may impose upon a court the positive duty to grant injunctive relief under specified conditions. A statutory request for injunctive relief is governed by the requirements of the statute, and express statutory language supersedes common-law requirements.")

The Court finds the Solicitor has satisfied his burden in this regard. First, the statutory definition of nuisance under South Carolina Code § 15-43-10(A) clearly embraces the conduct at issue here.⁶ And, South Carolina Code § 15-43-30 requires the Court to enter preliminary injunctive relief if the evidence presented by the Solicitor sufficiently establishes that a nuisance occurred at the Subject Property under S.C. Code § 15-43-10(A). As a result, the Nuisance Statute both embraces the issues herein and affords temporary injunctive relief to the State upon a satisfactory showing.⁷ What is required for a "satisfactory" showing is set forth below.

The Court must next determine whether the Solicitor has adequately established a violation of the Nuisance Statute entitling the State to a temporary injunction. (See S.C. Code § 15-43-30 ("[T]he court...shall...allow a temporary writ of injunction..."). According to the Solicitor, Defendants violated the Nuisance Statute because acts of prostitution, assignation, and lewdness occurred at the Subject Property. (See Memo. in Supp., p. 1; see also Verified Petition.) EI denies these allegations. However, and as more fully set forth below, the Court finds the Solicitor has satisfied the burden under S.C. Code § 15-43-30 by introducing evidence demonstrating a repeated and continuous nuisance, as defined by the law set forth below, existed at the Subject Property within the meaning of the Nuisance Statute.

In reaching this conclusion it is critical to note that, as a threshold issue, sexually oriented businesses may lawfully operate in South Carolina and, more specifically, here in Greenville County. Thus, in interpreting and applying the Nuisance Statute, the Court must first analyze what the terms lewdness, assignation, and prostitution ("Prohibited Acts") mean under the

⁶ The Court incorporates herein by reference the full text of both S.C. Code §§ 15-43-10(A) & 15-43-30.

⁷ The Court would also note that S.C. Code § 15-43-30 has been previously invoked on behalf of the State to close a business--pending a trial on the merits--due to a violation of the Nuisance Statute. (See, e.g., *State ex rel. Hembree v. Sherald*, No. 2010-UP-448, 2010 WL 10085571, at *2 (Ct. App. Oct. 19, 2010) (Unpub.) (Holding a preliminary injunction that shuttered a business for over a year before a trial on the merits under the Nuisance Statute did not moot the action.)

Nuisance Statute. The Court finds the following sources relevant in analyzing the Prohibited Acts: South Carolina Code § 16-15-90⁸; Greenville County Code of Ordinances ("GCCO") §§ 2.5-71, 2.5-72, 2.5-73, 2.5-82, & 2.5-87 (Enacted as Ord. No. 2673);⁹ and a prior Consent Order executed by EI on January 24, 2002.¹⁰ (*Compare* FN9 with FN10.) It is certainly noteworthy that in this Consent Order it was clearly defined as to what could or could not occur in PP and the Consent Order also sets out the affirmative duties and obligations that PP undertook in its location at 805 Frontage Road. Thus, it is against the legal framework established by these sources that the Court must next determine if the evidence sufficiently establishes that Prohibited Acts occurred.

Taken alone, paragraphs 4 through 10 of the Affidavit of Deputy Sheriff Robert Curtis ("Deputy Curtis"), which EI contends is inadmissible hearsay in its entirety, along with the video evidence (attached as Exhibit D to the Verified Petition),¹¹ amply establish the Prohibited Acts repeatedly and consistently occurred at the Subject Property in violation of South Carolina Code § 15-43-10(A). GCSO's investigation at Platinum Plus involved over fifteen (15) visits to the Subject Property. (*Id.* at 4.) Paragraph 9 of Deputy Curtis's Affidavit evidences a wide range of

⁸ South Carolina Code § 16-15-90 declares prostitution and acts in furtherance thereof illegal in South Carolina. The Court incorporates South Carolina Code § 16-15-90 herein by reference.

⁹ Greenville County Ordinance prohibits the use of the Subject Property as a "sexually oriented business." (GCCO § 2.5-87.) Under the Ordinance, no person in the Subject Property may appear in a "state of nudity" or engage in live performances characterized by the exposure of "specified anatomical areas" or by "specified sexual activities." (GCCO § 2.5-72 ("Adult cabaret").) No person in the Subject Property may display her/his "bare buttock, anus, male genitals, female genitals, or female breast." (*Id.* ("Nudity" or "a state of nudity").) Moreover, no person in the Subject Property may engage in the "(1) ... fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) Masturbation, actual or simulated..." (*Id.* ("Specified sexual activities").)

¹⁰ In the January 24, 2002 Consent Order, EI stipulated by judicial decree that EI shall not operate a "sexually oriented business" by allowing any person: to appear in "state of nudity," to engage in "specified sexual activities," or to display "specified anatomical areas" as defined by GCCO #2673 and codified at GCCO §2.5-72.

¹¹ EI concedes Exhibit D is its own surveillance footage from the Subject Property. The pertinent part of the video evidence begins at approximately the five minute mark of Exhibit D.

Prohibited Acts that he personally observed during GCSO's investigation. (*Id.* at 9.) Thus, the Court finds that the affidavit and the video are admissible for the purposes of the present motion. And, to the extent the Deputy Curtis affidavit may contain some degree of hearsay outside of his personal observations, the Court has disregarded the same. For purposes of the instant motion, the Court is compelled to find that such repeated and consistent acts constitute a nuisance under South Carolina Code § 15-43-10(A).¹²

Despite EI's objections, the Court also finds the many sworn statements of the female "entertainers" submitted as attachments to the Curtis Affidavit are admissible. (*See* Curtis Aff., Attach. C-1 to C-8.)¹³ The content of the statements reflect they were based upon the personal knowledge and observations of the individuals who made them. (*Id.*) The statements indicate their content is accurate and correct. (*Id.*) With exception of one statement by an EI employee, the statements were sworn to a notary. (*Id.*) The Court finds such statements are admissible and properly considered by the Court, particularly at the temporary injunction stage. (*Id.*) The Court further finds that these statements both corroborate and expand upon the Prohibited Acts personally observed by Deputy Curtis and captured on the video evidence. (*Id.*) But, as noted above, even if the Court did not consider the statements, the Court would still find, and does find, the State amply satisfied its burden with the Curtis Affidavit and video evidence alone.¹⁴

¹² The Court incorporates herein by reference the conduct set forth in Paragraph 9 of the Affidavit of Deputy Curtis. (Curtis Aff., ¶9.) "Of note, most or all of the sexually related acts set forth [in Paragraph 9 of the Curtis Affidavit] were not isolated occurrences." (*Id.* at 10.) The conduct "serially occurred at Platinum Plus over [Curtis's] fifteen (15) or more visits to the Subject Property as witnessed by [him] and other undercover GCSO officers." (*Id.*) And, with respect to such evidence, EI provides scant, if any, evidence rebutting the same.

¹³ The Court incorporates the content of the statements attached to the Curtis herein by reference. (Curtis Aff., Attach. C-1 to C-8.)

¹⁴ The Court did not consider the online statements (attached as Exhibit F to the Curtis Affidavit) in connection with this Order.

The Court next finds the evidence submitted thus far, as noted above, fails to establish abatement has occurred within the meaning of the Nuisance Statute. Initially, under the Nuisance Statute, only "the owner of the real estate" has a right to avoid suit by statutory abatement. (S.C. Code § 15-43-110.) The evidence of record confirms FRAI owns the real estate, not EI. (See Curtis Aff., ¶8 & Attach. B.) Thus, EI can avoid neither suit nor the instant Motion by *post facto* claims that it implemented measures to cease the unlawful conduct. And, the fact that at the time Solicitor served the March 27, 2015 written notice of the alleged nuisance upon FRAI, he also served EI with the same written notice of the alleged nuisance is not legally relevant under the Nuisance Statute. To accept EI's argument allowing a tenant to abate a nuisance would require the Court to re-write the Nuisance Statute.

However, even if EI as a tenant could abate under the Nuisance Statute, and even if the measures taken by EI somehow established abatement occurred within the meaning of the Nuisance Statute, a statutory construction the Court rejects, the record evidence would still overwhelmingly belie a finding of appropriate abatement occurred in this case. Thus, under the Nuisance Statute and the relevant authorities cited above, the State has established a right, both factually and legally, to close PP. This is especially true where, as here, a Consent Order of this Court already existed under which EI stipulated--by judicial decree--to prevent the exact conduct giving rise to this lawsuit and the Solicitor's Motion. (See Jan. 24, 2002 Consent Order.) Even if otherwise proper, the Court would still reject EI's assurances of self-policing when a prior Court Order failed to deter EI's conduct. EI, in that litigated Consent Order, affirmatively agreed to a defined acceptable course of conduct, a defined acceptable behavior in the venue and a defined level of affirmative duties it would undertake. Now, in light of both the degree and the nature of the evidence, EI has clearly crossed the lines it agreed to operate within and the lines that the

applicable law allows. EI may not close its corporate eyes to the activities in its location at 805 Frontage Road and then claim blindness as a defense.

EI also argues the Nuisance Statute, as it is sought to be enforced in this case, violates the *First Amendment*, as an unconstitutional prior restraint on expressive activity. While premature to fully argue the issue, the Court rejects this argument at this point in the proceedings. EI's argument in this regard, by its own admission, appears to lack evidentiary support. (See, e.g., EI's Memo. in Opp., pp. 12-13, FN3 ("While it is too early to discern the motivation of the state....").¹⁵ Moreover, based upon the evidence and record so far, the Court finds the South Carolina Nuisance Statute, as applied here, does not implicate the *First Amendment* since the conduct it aims to penalize garners no *First Amendment* protection. See *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986).¹⁶

In granting the relief sought by the Solicitor's Motion, the Court notes the following to avoid any confusion:

- First, the Court's Order constitutes a purely temporary order based solely on the record to date. None of the findings herein constitute permanent or conclusive findings and Defendants retain their full rights to present any and all defenses at the trial on the merits. Similarly, none of the findings herein shall in any way be binding upon any of the parties at the time of the trial on the merits.
- Second, to date, none of the evidence submitted by the Solicitor reflects FRAI participated in the Prohibited Acts prompting the Solicitor to bring this action or file the instant Motion. The record evidence, to date, only reflects FRAI owned the real property where the Prohibited Acts allegedly occurred.
- Third, the trial of this case shall occur on an expedited basis. As soon as practicable, the Parties are directed to consult upon a timetable for completing discovery and, if possible,

¹⁵ If EI later unearths evidence supporting its claims of selective prosecution in violation of its *First Amendment* rights, such arguments remain available to EI for presentation at the trial on the merits.

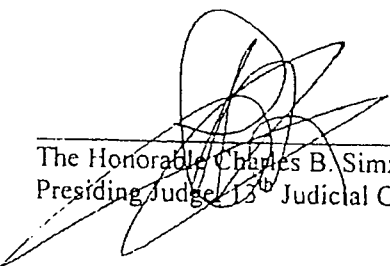
¹⁶ In *Arcara*, the United States Supreme Court upheld the closure of an adult bookstore used for prostitution under New York's Nuisance Statute because protected activities (i.e., bookselling) did not: "confer *First Amendment* coverage [so as] to defeat a valid statute aimed at penalizing and terminating illegal uses of premises..." (*Id.* at 707); see also *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 66 (1990) (Citing and following the analysis in *Arcara*.)

identify potential trial dates. Once completed, the Parties are directed to contact the presiding Administrative Judge to schedule a trial date consistent with this directive. Counsel for all parties have indicated the case will likely be ready for a trial on the merits within 90 days.

For the reasons set forth above, the Court **GRANTS** the Solicitor's Motion for a Temporary Injunction including the relief prayed for therein, subject only to the following clarifications:

- A. Defendants shall have forty-eight (48) hours following the issuance of this Order and its receipt by Defense Counsel to wind-down and cease, pending further Court Order, Platinum Plus's operations, as operated by Elephant, Inc., at 805 Frontage Road in Greenville, South Carolina 29615;
- B. After the forty-eight (48) hours set forth above, the Greenville County Sheriff's Office shall post a laminated Notice (size to be 11x14) on all exterior doors of 805 Frontage Road in substantially the same form as Attachment A;
- C. This Order shall remain in full, force and effect until: (1) a trial can be conducted on the merits of the above-captioned matter; or (2) the Court modifies this Order;
- D. Individuals found guilty of violating this Order shall be subject to the Court's contempt powers as required by S.C. Code §§ 15-43-30 & 15-43-70 and subject to a fine of up to one thousand dollars (\$1,000.00) or imprisonment up to six (6) months.

IT IS SO ORDERED.



The Honorable Charles B. Simmons, Jr.
Presiding Judge 13th Judicial Circuit

Greenville, S.C.

May 6, 2015

ATTACHMENT A

Pursuant to Court Order, this business is closed until further Order. See, 2015-CP-23-02597.

Violation of this Order may result in contempt of court, including monetary fines and/or jail.

A copy of the Court Order may be obtained from the Greenville County Clerk of Court, 305 East North Street, Greenville, SC 29601.

A handwritten signature or set of initials, possibly 'CP' or 'CB', written in dark ink at the bottom center of the page.

EXHIBIT J

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina on the relation of
William Walter Wilkins, III, Solicitor of
the Thirteenth Judicial Circuit,

Plaintiff,

vs.

Elephant, Inc. and Frontage Road
Associates, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-23-02597

AFFIDAVIT OF SERGEANT
CLAUDE TODD

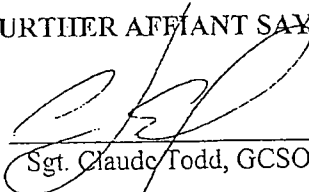
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/IKER
2015 APR 28 PM 12 34

Personally appeared before me, the undersigned, who, being duly sworn, states as follows:

1. My name is Claude J.L. Todd. I am over the age of eighteen (18) years old. I am of sound mind and I am competent to execute this affidavit. The content of this affidavit is based upon my personal knowledge.
2. I am a duly sworn Law Enforcement Officer with the Greenville County Sheriff's Office ("GCSO"). I work as the Sergeant over the Vice and Narcotics Division. I have worked for the GCSO for seventeen and a half years.
3. On April 20, 2015, I was asked to serve legal paperwork on Elephant, Inc. ("EI") at its local business address. My understanding was that service had been attempted on EI's registered agent in Columbia, South Carolina but was refused. As a result, I was dispatched to 805 Frontage Road in Greenville, South Carolina 29615 ("Subject Property") to effectuate service of process on EI.
4. On April 20, 2015, I was in uniform. I entered the Subject Property and asked to speak to whomever was in charge. At that point, Mr. Rick Zurich stepped forward and identified himself as the manager in charge.

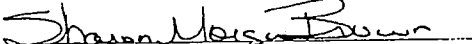
5. I asked Mr. Zurich to step outside with me due to the interior lighting and noise.
6. At that point, I inquired about Brett Mehnert, who had previously worked as Platinum Plus's General Manager. Mr. Zurich stated that Mr. Mehnert had left the State and that he had taken over Mr. Mehnert's position.
7. I then served Mr. Zurich with the following legal paperwork on behalf of EI: Summons, Verified Petition with Exhibits, Motion for Temporary Injunction, Affidavit of Robert Curtis, and the Notice of Hearing.
8. Service was completed by hand-delivery to Mr. Zurich on April 20th, 2015 at 2:13 PM.
9. At no time did Mr. Zurich indicate to me that he lacked the authority or otherwise could not accept service on behalf of EI. In fact, Mr. Zurich assured me that he would "get [the paperwork] to the people who need[ed] it."
10. I then left the Subject Property.

FURTHER AFFIANT SAYETH NAUGHT.


Sgt. Claude Todd, GCSO

SWORN TO before me this

28 day of April, 2015.


Notary Public for South Carolina

My Commission Expires: Dec 10, 2020
(SEAL)

EXHIBIT K

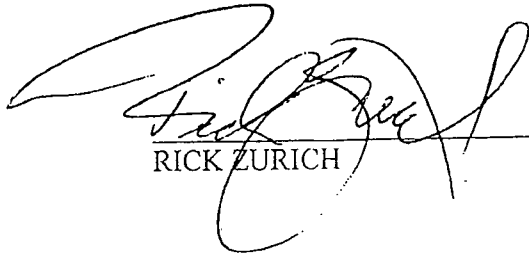
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH CIRCUIT
COUNTY OF GREENVILLE	)	C.A. NO.: 2015-CP-23-02597
State of South Carolina on the relation	)	
Of William Walter Wilkins, III, Solicitor	)	
Of the Thirteenth Judicial Circuit,	)	
	)	
Plaintiff,	)	
Vs.	)	AFFIDAVIT OF RICK ZURICH
	)	
Elephant, Inc. and Frontage Road Assoc.,	)	
Inc.,	)	
Defendant	)	

PERSONALLY APPEARED BEFORE ME, being duly sworn, testifies and sayeth:

1. My name is Rick Zurich and I am the Day Manager of the Platinum Plus in Greenville, South Carolina. This is one of three Platinum Plus locations in the state of South Carolina.
2. I am an employee of Elephant, Inc.
3. I am not and never have been the registered agent of Elephant, Inc.
4. I am not an officer of the Elephant, Inc. corporation.
5. I am not authorized to accept service of legal documents, summonses, notices, or other pleadings on behalf of Elephant, Inc.
6. I have never been authorized to accept service of legal documents, summonses, notices, or pleadings on behalf of Elephant, Inc.
7. I have never been informed by the management of Elephant, Inc. that I am authorized to accept service of legal documents, summonses, notices, or pleadings on behalf of Elephant, Inc.

8. I have never represented to anyone that I am authorized to accept service of
legal documents, summonses, notices, or pleadings on behalf of Elephant, Inc.
9. I did not tell the process server who served me with the summons & complaint
in this case that I was authorized to accept service.

FURTHER, AFFIANT SAYETH NOT.


RICK ZURICH

SWORN TO BEFORE ME
this 29 day of April, 2015.

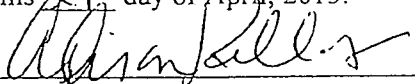

Notary Public for South Carolina
My commission expires: 10-25-15

EXHIBIT L

STATE OF SOUTH CAROLINA)
PLEAS)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON
THIRTEENTH CIRCUIT
C.A. NO.: 2015-CP-23-02597

State of South Carolina on the relation)
Of William Walter Wilkins, III, Solicitor)
Of the Thirteenth Judicial Circuit,)

Plaintiff,)

Vs.)

Elephant Inc. and Frontage Road Assoc.,)
Inc.,)

Defendant)

AFFIDAVIT OF KEVIN FORD

The undersigned, being duly sworn, states as follows:

- My name is Kevin Ford and I am the director of operations of Ken Wood Enterprises which owns Elephant, Inc. and I have held that position for 7 years. My responsibilities include supervision of management, including hiring and firing, at the location known as Platinum Plus in Greenville, South Carolina.
- EI operates in multiple locations, including Greenville, South Carolina. Our corporate office is not located in Greenville, South Carolina. Our Greenville location is just one of many locations owned by EI and operates as an adulated entertainment nightclub.
- Rick Zurich is currently employed as the Day Manager for EI's Greenville, South Carolina location. He is not the general manager of the Greenville location. He is not a manager of the corporation.
- Mr. Zurich reports to, and is supervised by, the Night Manager of the Greenville, South Carolina location. As the majority of the business conducted at our Greenville location occurs in the night hours, the Night Manager is the person tasked with the real authority and responsibilities at the Greenville, location, however, none of the Greenville employees are considered general or corporate

managers of Elephant, Inc.

- Mr. Zurich has no authority hire or fire employees. Mr. Zurich has no authority to enter into contracts or bind the corporation in any way.
- Most importantly, Mr. Zurich does not have the authority to accept service of process or to accept service of legal papers of any fashion. Mr. Zurich has never had the authority to accept service of process on behalf of EI.
- Mr. Zurich was not authorized to accept service of process in this Action.
- Other than the attempt to serve process on Mr. Zurich, who is not an officer or manager of EI and who was not authorized to accept such service, no other employee or agent of EI has been served with a copy of the Summons and Complaint in this Action as of the date of this Affidavit.
- The registered agent for the corporation has not been served with a copy of the Summons and Complaint in this Action.

FURTHER AFFIANT SAYETH NOT.



Kevin Ford

SWORN TO BEFORE ME
This ___ day of April, 2015

Notary Public for SC
My commission expires:

EXHIBIT M

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
E-MAIL: rsh@rshpa.org

May 5, 2015

(864) 232-0026
FAX (864) 242-4692

*Via Electronic Mail and
U.S. Mail*
The Hon. Charles B. Simmons, Jr.
305 E. North St.
Greenville, SC 29601

csimmons@greenvillegov.org

*Re: State of South Carolina under the Relation of William Walter Wilkins, III,
Solicitor for the Thirteenth Judicial Circuit v. Elephant, Inc. and Frontage Road
Association, Inc.
C.A. No.: 2015-CP-23-2597*

Dear Judge Simmons:

Attached hereto is our redline of the proposed order submitted by Mr. Davis at your request.

The majority of changes, modifications or additions are self-explanatory and I believe do not deviate from your verbal instructions but instead simply clarify.

It is disappointing that the Solicitor, through Mr. Davis, in its rush to close down this business, declined to even consult with counsel for Elephant, Inc. concerning the proposed revisions suggested by Elephant Inc., which we believe would greatly improve the order drafted by Mr. Davis and more closely track the ruling outlined by Your Honor last Friday. As I recall, we were provided 24 hours to review the order drafted by Mr. Davis and then, after our review, the parties were to consult prior to submitting the Word versions to the Court for review and signature. Apparently that is not a directive with which Mr. Davis chose to comply.

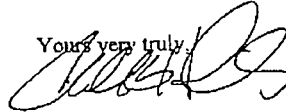
While cognizant of your directive not to disclose or discuss your ruling of last Friday, even with our clients, and your directive not to continue to argue the case I am of the opinion that there are two items which should be further clarified. This is especially true in light of the very short opportunity the Defendants had to prepare for the hearing, the fact that the introduction of evidence was virtually completely controlled by the Petitioner and, of course, the very serious consequences of putting a business out of business and 100 people into the unemployment office.

Specifically, I believe that the definition as applied in the statute at the temporary injunction stage does not require the actual closure of the business. That should be only after the final hearing should the Petitioner prevail. This is completely consistent with the ten day notice

requirement which must be provided to the owner before an action may even be brought against him as well as the provision which allows the owner to reopen a property for business upon posting of a bond in the value of the property and the inclusion of contempt sanctions and penalties for violation of the order. Enjoining the conduct is completely consistent with those provisions rather than an injunction locking the doors at the temporary stage.

Secondly, given the dearth of cases addressing this statute by the Appellate Courts, especially in the recent past, there are legitimate questions about issues such as abatement, the standards to be applied for issuance of a temporary injunction and a distinction between tenant and owner that we will be promptly seeking an order of supersedeas upon the filing of your order. In that regard, prior to handing out pink slips, we are respectfully and formally asking the Court to stay implementation of the order pending a decision on our motion for supersedeas to the Appellate Court.

Yours very truly,



Randall S. Hiller

RSI/ak

Cc: Hannah Metcalf, Esq. (via email only)
Lane Davis, Esq. (via email only)
W. Walter Wilkins, III, Esq. (via email only)
Andrew Cui-breath, Esq. (via email only)

EXHIBIT N

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
E.MAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

May 6, 2015

*Via Electronic Mail and
U.S. Mail*

The Hon. Charles B. Simmons, Jr.
305 E. North St.
Greenville, SC 29601

csimmons@greenvillecounty.org

*Re: State of South Carolina under the Relation of William Walter Wilkins, III,
Solicitor for the Thirteenth Judicial Circuit v. Elephant, Inc. and Frontage Road
Association, Inc.
C.A. No.: 2015-CP-23-2597*

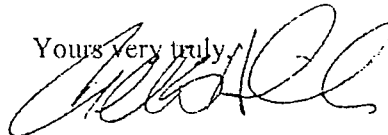
Dear Judge Simmons:

In my correspondence to the Court in conjunction with the preparation of the Order in the above referenced matter of yesterday I requested a stay pending our appeal and motion for supersedeas to the South Carolina Court of Appeals.

That appeal is being filed as I dictate this letter and is being served on all counsel of record. I am sure that none of us have any interest in tilting at windmills.

If you require then we will of course file a motion today asking you to supersede the Order or, if that is indeed a waste of time and energy, I believe it would suffice that you simply respond to this correspondence indicating your unwillingness to grant any such motion.

Yours very truly,



Randall S. Hiller

RSH/ak

Cc: Hannah Metcalf, Esq. (via email only)
Lane Davis, Esq. (via email only)
W. Walter Wilkins, III, Esq. (via email only)
Andrew Culbreath, Esq. (via email only)

EXHIBIT O



Hannah Metcalfe <hmetcalfe@mpalawfirm.com>

RE: State v. Elephant Inc., et al

1 message

Simmons, Judge Charles <CSimmons@greenvillecounty.org>

Wed, May 6, 2015 at 3:34 PM

To: Alison Kelley <ahk@rshpa.org>

Cc: "Randall S. Hiller" <rsh@rshpa.org>, Hannah Metcalfe <hmetcalfe@malawfirm.com>, "lane.davis@nelsonmullins.com" <lane.davis@nelsonmullins.com>, "Wilkins, Walt" <wwilkins@greenvillecounty.org>, "Culbreath, Andrew" <ACulbreath@greenvillecounty.org>

Mr. Hiller,

I completely understand there is much "lawyering" still to be done on this case.

In light of the time constraints and at the great risk of giving an improper advisory opinion, I would think it best for your motion to be filed with and addressed by our appellate courts.

If any motions by any party are filed at this level, I will promptly address them.

Judge Simmons

Charles B. Simmons, Jr., Judge

Greenville County Courthouse

305 East North Street, Suite 313

Greenville, SC 29601

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From: Alison Kelley [mailto:ahk@rshpa.org]

Sent: Wednesday, May 06, 2015 2:12 PM

To: Simmons, Judge Charles

Cc: 'Randall S. Hiller'; 'Hannah Metcalfe'; lane.davis@nelsonmullins.com; Wilkins, Walt; Culbreath, Andrew

Subject: re: State v. Elephant Inc., et al

Dear Judge Simmons:

Please see the attached correspondence from Mr. Hiller in the above matter.

Respectfully,

Alison H. Kelley

Paralegal to Randall S. Hiller

850 Wade Hampton Blvd.

Greenville, SC 29609

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