

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000366

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SC Court of Appeals

Spartanburg Buddhist Center of South Carolina, Inc.,

Respondent,

v.

Ron Ork and Luke Dong,

Appellants.

Ron Ork and Luke Dong,

Third Party Plaintiffs,

v.

Chivin Sun, Robert Pek, Sakhan Sok, Sambo Khieav,
Sophay Pres, and Tommy Ong,

Third Party Defendants.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
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 COUNTY OF SPARTANBURG)
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 Spartanburg Buddhist Center of)
 South Carolina, Inc.,)
)
 Plaintiff,)
)
 Vs.)
)
 Ron Ork and Luke Dong,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

**MEMORANDUM IN OPPOSITION
 TO PLAINTIFF'S TEMPORARY
 INJUNCTION AND IN SUPPORT OF
 DEFENDANTS' MOTION TO
 DISSOLVE TEMPORARY
 INJUNCTION**

Case No.: 2014-CP-42-1622

COMES NOW Defendants, Ron Ork, and Luke Dong, by and through their counsel, A Business Law Firm, LLC, respectfully submitting this Memorandum. The Defendants' herein ask this Court to dissolve the Order Granting Temporary Injunction, deny the Plaintiff's Motion for a Temporary Injunction, and grant the Defendants' costs and attorneys' fees that they have incurred as a result of the Temporary Injunction and the absence of security upon the issuance of the Order Granting Temporary Injunction.

I. BACKGROUND

If you would have driven far enough down Bryant Road on Easter Sunday, April 20, 2014, between the hours of 1p.m. and 4 p.m., you would have eventually seen a sight that is unfamiliar to most non-Cambodian people from Spartanburg. The Spartanburg Buddhist Center of South Carolina, Inc. (the "Center") had a large wooden fence facing the street and all sorts of flags flying high and lining the perimeter of the Center grounds. It looked much different on that Easter Sunday than it did in 2010, when the Center was formed as a non-profit corporation. In 2010, its roughly 9.2 acres were mostly clay and woods, but now, due in large part to the efforts of the Center's head monk and a Defendant in this case, Ron Ork (the "head monk"), the grounds look like a meticulous garden where all are welcome to walk on paved walkways, a serene Meditation Center sits far away from the road, and a new temple to shelter those who wish to learn about Buddhism is under construction.

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Inside that fence at 2 p.m. and seated on a large patio in the sunlit Spring weather offered by that day were several hundred Buddhists about to watch or participate in a general meeting to elect a new President and Board of Directors for the Center. That is where the conflict begins. The former President is Sambo Khiev (the "former President") and the former registered agent is Robert Pek (the "former registered agent"). The former President and The former registered agent were not at the meeting. The former President and The former registered agent did not want the meeting to happen. The former President wanted to remain President and The former registered agent wanted to remain registered agent and they knew that they would not be elected again. They were right. The members unanimously elected another President and a new Board of Directors. Then the Board of Directors unanimously elected a new Registered Agent.

If this Honorable Court will take note of the former President's and The former registered agent's desire to regain their power, the seemingly contradictory and confusing posture of this case will be easier to understand.

II. THE PLAINTIFF IS MISIDENTIFIED AND THE REQUESTED RELIEF HAS LITTLE TO NOTHING TO DO WITH THE DEFENDANTS

After the meeting on April 20, 2014, Sambo was not the President. So the former President could not bring suit on behalf of the Center on Thursday April 24, 2014, when the Defendants were served with a Summons and Complaint and received notice of the Temporary Injunction. It is not the Center that is suing the individual Defendants, but the former President and the former registered agent.¹ The former registered agent withdrew \$3010 from the Center's bank account to pay attorneys' fees. One hundred and seventeen people present at the general meeting signed a petition demanding the former registered agent's return of the \$3010.

If the Center is actually the Plaintiff, the Plaintiff is predominately suing itself. The only relief requested by the Plaintiff that could remotely affect the individual Defendants is the request to have any funds improperly taken from the Center's bank account returned to the

¹ The former registered agent took \$3010 from the Center's bank account to pay his attorneys on April 17, 2014. The head monk withdrew the money remaining in the account, \$61,400, on Friday April 18 and put it back into the account on Monday April 21, because that money was designated for the construction of the new temple and there was concern that the former registered agent would misuse the funds. Many members signed an authorization for the head monk to withdraw and protect that money.

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Center.² That cause of action fails because the all of the funds are back in the account and there was no harm. Many members approve of what the head monk did with the money. The corporation and its current treasurers should have the opportunity to ratify the head monk's decision to protect the funds that were set aside for constructing the new temple.

III. THE TEMPORARY INJUNCTION VIOLATES SOUTH CAROLINA RULES OF CIVIL PROCEDURE RULE 65 AND THE DEFENDANTS MAKE A MOTION FOR IT TO BE DISSOLVED

An Order Granting Temporary Injunction to the Plaintiff was signed and filed by this Court on Monday April 21, 2014.³ South Carolina Rules of Civil Procedure ("SCRCP") Rule 65(a) states that "No temporary injunction shall be issued without notice to the adverse party." The Defendants received no notice before this Court issued the Temporary Injunction.

SCRCP Rule 65(c) states in part that "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." The court remanded the case to the trial court to award the appropriate amount of costs and damages incurred as a result of the temporary injunction. Nominal security is improper "because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper." *Atwood Agency v. Black*, 374 S.C. 68, 73 (2007), 646 S.E.2d 882. In the case at bar, the Plaintiff provided no security. The Defendants request the costs and attorneys fees they have incurred as a result of this Court's Order Granting Temporary Injunction.

The Order Granting Temporary Injunction states that "this Order is intended to maintain the status quo during the pending litigation" but orders that an election that happened the day before the Order was signed should be invalidated if it was improper and declares that "All

² The Order Granting Temporary Injunction orders that (1) the Bylaws be held valid and enforceable, (2) the April 20th meeting was invalid if improper under the Bylaws, (3) the officers and board members to be changed to what they were before the April 20th election, and (4) the return of improperly withdrawn funds. Those injunctions do not demand anything of the Defendants, just the Center.

In the Plaintiff's Complaint, in the Prayer for Relief, the Plaintiff prays to recover a temporary injunction against Defendants acting on any meeting not held in accordance with the bylaws (Defendant's agree to not act on the results of any meeting not held in accordance with the bylaws), and to return any improperly withdrawn money to Plaintiff (the head monk was a signatory on the bank account and transferred the money to a bank account belonging to the Center).

³ Order Granting Temporary Injunction.

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officers and Board of Directors members will be the same as before the April 20, 2014 election". The Order clearly does not maintain the status quo as it existed, but retroactively changes what happened the day before the Order was signed.

The Order also orders the Defendants to deposit the withdrawn funds back into Plaintiff's bank account. Only the former registered agent and the head monk withdrew money from the account. The former registered agent withdrew money on April 17 and paid an attorney.⁴ The head monk withdrew the remaining funds on April 18⁵ and deposited all of the funds back into the account on Monday April 21, 2014.^{6 7} The former President and The former registered agent want the money placed into an account from which they can withdraw funds. The status quo, however, is that the money is back in the Center's account and the former registered agent is no longer a signatory.

IV. APPLICABLE LAW

"A party seeking injunctive relief 'must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.'" *Rawlinson Road Homeowners Ass'n, Inc. v. Jackson*, 395 S.C. 25, 35, 716 S.E.2d 337, 343 (Ct. App. 2011). "The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. South Carolina Dept. of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011)

V. PRESERVING THE STATUS QUO MEANS MAINTAINING THE EXISTING STATE OF AFFAIRS

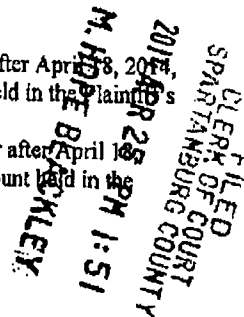
The former President, The former registered agent, and the former Board of Directors cannot be reinstated by virtue of a temporary injunction. "[A] temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until

⁴ Exhibit I – Cashier's Check

⁵ Exhibit J – Cashier's Check

⁶ Exhibit D – Affidavit of Ron Ork, Paragraph 35 "All money withdrawn by Defendants, on or after April 18, 2014, from a bank account held in the Plaintiff's name, has been deposited back into a bank account held in the Plaintiff's name."

⁷ Exhibit E – Affidavit of Luke Dong, Paragraph 33 "All money withdrawn by Defendants, on or after April 18, 2014, from a bank account held in the Plaintiff's name, has been deposited back into a bank account held in the Plaintiff's name."



opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation..."*County Council of Charleston v. Felkel*, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964) (**emphasis added**). If the purpose of a preliminary injunction is to preserve the status quo, then such an injunction in this case could only properly preserve the state of affairs as they are once this Court issues an Order Granting a Temporary Injunction, which would be after the general meeting held on Sunday April 20, 2014 where the current President and Board of Directors were elected by the Center's members.

VI. THE CENTER WILL NOT SUFFER IRREPARABLE HARM

"An abuse of discretion [in granting a temporary injunction] occurs where the trial court is controlled by an error of law or where the trial court's order is based on factual conclusions without evidentiary support." *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 531 S.E.2d 518 (2000).

Here, the Plaintiff has offered no evidentiary support that the Center will suffer irreparable harm or even named the irreparable harm that the Center will suffer if this Court does not issue a temporary injunction. The members' vote for the current President and Board of Directors at the general meeting held on April 20, 2014 was unanimous.^{8 9} So the voting members do not think the election will result in *any* harm.

VII. THE PLAINTIFF HAS ADEQUATE REMEDIES AT LAW

The Plaintiff has not specified the harm or damages that it will suffer if this Court does not issue a temporary injunction, so it is difficult for the Defendants to say whether the particular harm can adequately be remedied at law. If the Plaintiff fails to name the irreparable harm or support it with evidence, this Court cannot properly issue a temporary injunction whether or not there is an inadequate remedy at law.

There are adequate remedies at law with which the Center could recover from Luke Dong

⁸ See video of April 20, 2014 meeting where all members raise their hands to vote for the current Board of Directors and the President.

⁹ During the annual meeting of the members of SBCSC, INC., held on April 20, 2014, all members unanimously voted to elect Khounnoeuy Sok as President of SBCSC, INC., and to elect Luke Dong, Nak Chhoun, Da Lay, Bounbert, and Randy Yip to serve as the Board of Directors for SBCSC, INC. See Exhibit H, Affidavit of Members; Exhibit E, Affidavit of Luke Dong; Exhibit F, Affidavit of Randy Yip; Exhibit G, Affidavit of Uon Sun; Exhibit D, Affidavit of Ron Ork.

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and The head monk. If Luke Dong intentionally lied to everyone about the general meeting being valid so that he could deceive them into electing the current President and Board, there is actually some measurable damage caused by the current Board and President being elected to the Center, and all of the other elements of Fraud, including justifiable reliance, could be met, the Center could possibly sue Luke Dong for Fraud. If the head monk took money from the Center unlawfully and put it into his own bank account, and didn't give it back to the Center, then possibly, if all of the other elements of Conversion are met, the Center could sue the head monk for Conversion or sue for an injunction to have Ron return the money. As mentioned earlier, however, the Plaintiff's allegations have little to nothing to do with the Defendants.

If The head monk or Luke Dong in their capacity as board members make a decision that actually harms the corporation or make a decision that is improper, any member, director, officer, employee, agent, or even the Attorney General can declare the corporation ultra vires with respect to the harmful decision per S.C. Code § 33-31-304. Members can also bring derivative suits against any director for an action that harms the Center per S.C. Code § 33-31-630. So the members have many adequate remedies at law should the Center be harmed.

VIII. THE PLAINTIFF CANNOT DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS

The Plaintiff only requests a temporary injunction and associated costs in its Prayer for Relief.¹⁰ It is impossible for the Plaintiff to succeed on the merits of this case because this Court cannot issue a temporary injunction at the end of this lawsuit. Imagine a basketball game. The Plaintiff's request is like one team asking the referee to run the clock *after* the game is over. By definition, the game is over when the clock runs out. You cannot make something happen after the game that only exists during the game.

Secondly, the Plaintiff asks this Court to order the Defendants to do two things, one of which does not make sense and the other of which has already been done. The first thing is to prevent the head monk or Luke Dong from acting on the results of any invalid meeting for the duration of this lawsuit. The Plaintiff does not name any of the other members of the Center in its Complaint.¹¹ The other members, the elected President, and remaining Board of Directors are free to act on the results of the Sunday meeting. The second thing for which the Plaintiff

¹⁰ See Plaintiff's Complaint

¹¹ See Plaintiff's Complaint

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asks is that any improperly withdrawn money be returned to the Plaintiff. However, the money is back in the account. The head monk moved the money from the bank account with a Cashier's Check and deposited it back into the same account.¹² They ask for the money to be returned to the account because they are pretending to represent the Center, but the money is back in the account and they have no control over it. They want to be signatories again. They are in a catch 22. If they say that they want to be signatories again, it appears they are less concerned about the Center than their personal control of the money, if they do not say that they want to be signatories again, they cannot control the money. When we pull off the mask of the Plaintiff and see The former President and The former registered agent hiding there, we realize that the "Plaintiff" does not want the money to simply be back in the account, but under The former President's and The former registered agent's control.

Thirdly, the general meeting held on April 20, 2014 was valid and the current President and Board of Directors were properly elected by the members of the Center. The Plaintiff has three arguments against the validity of that meeting.

First, the Plaintiff claims that because no one was elected in 2012, which is when the Plaintiff claims the President's and Board of Director's terms ended, the President and Board get another term. Article 8, Section 6 specifically addresses the Directors' Terms of Office. "Each director shall hold office for a period of three (3) years or until his or her successor is elected of qualified." Article 9, Section 3, only says that the "term of President is three(3) (sic) years." Neither the Bylaws nor the South Carolina Nonprofit Corporation Act says that the President and Board of Directors automatically get another term if there is no election at the three year mark. The South Carolina Nonprofit Corporation Act states that, "[d]espite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed, and qualifies, or until there is a decrease in the number of directors."¹³ To hold otherwise would be like President Obama getting another term in 2016 because Election Day was on November 6 in 2012, but not on November 6 in 2016. Additionally, The former President's and the former Directors' terms could not have ended in 2012 because the terms are for "three (3) years" and the Center did not come into existence until February 16, 2010.¹⁴ Furthermore, the meeting was conducted according to Robert's Rules of

¹² Exhibit D, Affidavit of Ron Ork, Exhibit E, Affidavit of and Luke Dong.

¹³ S.C. Code of Laws §33-31-805 (d)

¹⁴ See Exhibit A, Secretary of State documents.

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Order.¹⁵

Second, the Plaintiff claims that the meeting on April 20, 2014 did not adhere to the Center's Bylaws. Article 7, Section 3 states that "A general meeting of members shall be held during the month of APRIL to elect the new President or the new Board of Directors or both, and to make any decisions related to the matter of the Corporation." The April 20th meeting was held during the month of April. Article 7, Section 4 states that "Written notice of any annual or special meetings shall be given to each member no less than seven (7) days before the date of such meeting, either [1] personally or [2] by mail, [3] E-mail or [4] by the secretary of the corporation." The first notice was mailed to each member on the member list¹⁶ on March 20, 2014 by a letter dated March 19, 2014.¹⁷ The second notice was mailed to each member on the member list on April 12, 2014.¹⁸ Notice was additionally given to each member who was present at the Khmer New Year event on April 12 and 13, 2014.¹⁹ Over 100 members attended the annual general meeting of the members held on April 20, 2014. Several members have attested to having received some form of notice regarding the April 20, 2014 meeting of the members; however, the Plaintiff has not brought forth one member who claims to have not received notice.

Third, the Plaintiff's claim the general meeting took place on April 6, 2014. However, that was a Board of Directors meeting and many members did not receive notice of the meeting.²⁰

IX. SUMMARY OF DEFENDANTS' REQUESTS

This Court should dissolve the Order Granting Temporary Injunction, deny the Plaintiff's Motion for a Temporary Injunction, and grant the Defendants' costs and attorneys' fees they

¹⁵ See video of April 20, 2014 meeting.

¹⁶ Exhibit K – Member roster; See Bylaws attached to Plaintiff's Complaint, Article 7, Section 1, Paragraph 3. "Membership is free of charge, except we require that you give the SBCSC, INC. (sic) the full name of head of household and address for Temple mailing purposes. It is a way to inform members of Buddhist Congregation events." (emphasis added).

¹⁷ Exhibit B – Notice 1, Exhibit D, Affidavit of Ron Ork, Paragraph 20.

¹⁸ Exhibit C – Notice 2


¹⁹ Exhibit D, Affidavit of Ron Ork, Paragraph 23, Exhibit F, Affidavit of Randy Yip, Paragraph 20, Exhibit G, Affidavit of Uon Soun, Paragraph 4

²⁰ Exhibit H, Affidavit of Members, Paragraph 3, Exhibit E, Affidavit of Luke Dong, Paragraph 16, "I did not receive notice of an annual general meeting of the members of SBCSC, INC., to be held on April 6, 2014."

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have incurred as a result of the Temporary Injunction and for the absence of security upon the issuance of the Order Granting Temporary Injunction.

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April 25, 2014

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STATE OF SOUTH CAROLINA)
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 COUNTY OF SPARTANBURG)
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 Spartanburg Buddhist Center of)
 South Carolina, Inc.,)
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 Plaintiff,)
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 Vs.)
)
 Ron Ork and Luke Dong,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

NOTICE OF MOTION AND MOTION TO RECONSIDER, ALTER, OR AMEND ORDER

Case No.: 2014-CP-42-1622

TO: TALLEY LAW FIRM, ATTORNEYS FOR PLAINTIFF,


YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59 and Rule 60 of the South Carolina Rules of Civil Procedure, the Defendant, Ron Ork and Luke Dong, through their attorneys, will move before the Presiding Judge of the Common Pleas Court in Spartanburg County, Spartanburg, SC, at a date and time to be specified by the court, for an order reconsidering, altering, or amending the court's order in the above-captioned action. This motion is based upon the applicable Rules of Court, South Carolina case law, and any affidavits and/or memorandum which may be filed prior to the hearing.

An Order Granting Temporary Injunction was granted ex parte and entered by the court on April 21, 2014. The Plaintiff moved for another temporary injunction on that same date. A hearing was held on April 25, 2014 on the Plaintiff's motion. The Defendants' filed a Motion to Dissolve and Vacate the Order Granting Temporary Injunction on the date of the hearing. During the hearing, the court agreed to hear Defendants' motion. Said motion was denied by the court and the Plaintiff's motion was granted in an Order Granting Temporary Injunction entered on May 16, 2014 and received by the Defendants' counsel on May 19, 2014.

The court committed errors of law in the following respects: the first temporary injunction was granted without notice to the Defendants and with a nominal bond, the second temporary injunction was granted without a bond, and the second temporary injunction granted relief to the Plaintiff that was not requested by the Plaintiff. Therefore, the Defendants' motion

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to dissolve and vacate the first temporary injunction should have been granted and the Plaintiff's motion for a temporary injunction should have been denied.


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May 28, 2014

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FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4201622

Spartanburg Buddhist Center Of South Carolina Luke Dong	Ron Ork Chivin Sun Sakhan Sok Sophay Pres	Luke Dong Robert Pek Sambo Khieav Tommy Ong
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: Motion to reconsider order denied

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 SPARTANBURG COUNTY
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INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature] 2165 25 July 2014
 Circuit Court Judge Judge Code Date

CPFORM4Cm
 SCCA SCRPC Form 4C (Revised 3/2013)

CLAIMED

For Clerk of Court Office Use Only

This judgment was entered on 25 of July 2014, and a copy mailed first class or placed in the appropriate attorney's box on 25 of July 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Scott Franklin Talley 2500 Winchester Place Suite 100
Spartanburg, SC 29301

Thomas Alexander Belenchia PO Box 3421 Spartanburg,
SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

M Hope Blackley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Spartanburg Buddhist Center of South Carolina, Inc.,)
 Plaintiff)

v.)

Ron Ork And Luke Dong)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-42-1622

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Scott F. Talley, Bar No. Address: 2500 Winchester Place, Suite 110, Spartanburg, SC 29301 phone: 864-595-2966 fax: 864-595-2969 e-mail: other:	Defendant's Attorney: Thomas A. Belenchia, Bar No. 2371 Address: 1989 South Pine Street, Spartanburg, SC 29302 phone: 864-699-9801 fax: 864-699-9803 e-mail: other:									
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information Nature of Motion: Motion to Reconsider, Motion for Stay of Executino of Contempt Order Estimated Time Needed: 15 mins Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO										
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.										
<div style="display: flex; justify-content: space-between;"> <div> <i>Thomas Camden Shively</i> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant </div> <div> January 13, 2015 Date submitted </div> </div>										
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td>(check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td>Name of Court Reporter:</td> </tr> <tr> <td><input type="checkbox"/> Other:</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	(check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter:	<input type="checkbox"/> Other:
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support										
(check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect										
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<input type="checkbox"/> Other:										
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____									
CLERK'S VERIFICATION										
Collected by: <i>Connie Seay</i>	Date Filed: <i>1-13-15</i>									
<input checked="" type="checkbox"/> MOTION FEE COLLECTED: <i>25.00</i> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____										

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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Spartanburg Buddhist Center of South
Carolina, Inc.,

Plaintiff,

Vs.

**NOTICES OF MOTIONS AND MOTION TO
RECONSIDER, ALTER, OR AMEND THE
CONTEMPT ORDER AND MOTION FOR STAY
OF EXECUTION OF THE CONTEMPT ORDER**

Ron Ork and Luke Dong,

Defendants.

Case No.: 2014-CP-42-1622

Ron Ork and Luke Dong

Third Party Plaintiffs,

Vs.

Chivin Sun, Robert Pek, Sakhan Sok,
Sambo Khieav, Sophay Pres, and
Tommy Ong,

Third Party Defendants.

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TO: THE HONORABLE R. KEITH KELLY, PRESIDING JUDGE, and TALLEY LAW FIRM
ATTORNEYS FOR PLAINTIFF,

I. NOTICE AND MOTION TO STAY EXECUTION OF THE CONTEMPT ORDER

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 62 of the South Carolina Rules of Civil Procedure ("SCRCP"), the Defendant, Ron Ork, through his attorneys, will move before the Presiding Judge of the Common Pleas Court in Spartanburg County, Spartanburg, SC, at a date and time to be specified by the court, for an order staying the execution of the Contempt Order dated January 7, 2015 for the time it takes the court to make a ruling on Ron Ork's motion to reconsider, alter, or amend, and the time it takes an appellate court with jurisdiction to rule on any appeal that arises out of an adverse ruling in the disposition of the motion to reconsider, alter, or amend.

SCRCP Rule 62(b) states in part that, "In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any

proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60...”

Ron Ork makes this motion because the Contempt Order requires him to pay \$3,500.00 of attorney’s fees to the Plaintiff within 45 days of the date of the Contempt Order and Mr. Ork is facing a five month prison sentence if he does not pay \$59,765.30 within ninety days of the date of the Contempt Order. However, Mr. Ork is a Buddhist monk with no income. Mr. Ork survives on the donations of others, owns no property, and lives in property owned by the Plaintiff. Mr. Ork does not have the ability to purge himself of contempt. Mr. Ork used the three checks at issue to pay the Plaintiff’s construction bills and did not personally retain any of the money he withdrew. Mr. Ork will have to serve five months in prison unless others step forward and donate to him the amounts set forth in the Contempt Order, which they are not obligated to do.

II. NOTICE AND MOTION TO RECONSIDER, ALTER, OR AMEND THE CONTEMPT ORDER

YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure (“SCRCP”), the Defendant, Ron Ork, through his attorneys, will move before the Presiding Judge of the Common Pleas Court in Spartanburg County, Spartanburg, SC, at a date and time to be specified by the court, for an order that reconsiders, alters, or amends the Contempt Order dated January 7, 2015, the Order Granting Temporary Injunction dated April 21, 2014, and the Order Granting Temporary Injunction dated May 1, 2014 to correct all errors of law and fact in those orders, which are more specifically set forth below:

1) The court erred by issuing a temporary injunction on April 21, 2014 (a) in violation of SCRCP Rule 65, (b) without providing notice to the Defendants prior to its issuance, (c) denying the Defendants an opportunity to be heard, (d) issuing the injunction without a bond, (e) ordering the parties to maintain a status quo that did not exist when the court signed the temporary injunction, and (f) failing to be “specific in terms.” (See *International Longshoremen Assn Local 1291 v. Philadelphia Marine Trade Association International Longshoremen Assn*

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Local 1291 v. Philadelphia Marine Trade Association, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2008))

2) The court erred by issuing a second temporary injunction filed on May 16, 2014 (a) in violation of SCRCF Rule 65, (b) without a bond, (c) that ordered injunctive relief not requested by the parties to the lawsuit, and (d) that failed to be “specific in terms.” (See *International Longshoremen Assn Local 1291 v. Philadelphia Marine Trade Association* *International Longshoremen Assn Local 1291 v. Philadelphia Marine Trade Association*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2008))

3) The court erred by holding Ron Ork in contempt of the first temporary injunction because Ron Ork complied with the first temporary injunction when he “deposit[ed] any funds withdrawn on or after April 18, 2014 back into Plaintiff’s bank account within twenty-four (24) hours of [the] Order,” which is all the temporary injunction required him to do. (*International Longshoremen Assn Local 1291 v. Philadelphia Marine Trade Association* *International Longshoremen Assn Local 1291 v. Philadelphia Marine Trade Association*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967); *Welchel v. Boyter*, 260 S.C. 418, 196 S.E.2d 496 (S.C., 1973); *County of Greenville v. Mann*, 556 S.E.2d 383, 347 S.C. 427 (S.C., 2001); *Phillips v. Phillips*, 341 S.E.2d 132, 288 S.C. 185 (S.C., 1986); *Western Carolina Regional Sewer Authority v. Bell*, 320 S.E.2d 487, 282 S.C. 646 (S.C. App., 1984))

4) The court erred by holding Ron Ork in contempt of the second temporary injunction because Ron Ork issued the last check in question on May 9, 2014, but the court did not file the second temporary injunction requiring the parties to agree on payment obligations until May 16, 2014, days after Ron Ork issued the last check. (See SCRCF Rule 58, *Serowski*, 381 S.C. 306, 315, 672 S.E.2d 589, 594 (Ct. App. 2009); *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 698 S.E.2d 856 (S.C. App., 2010))

5) The court erred by awarding the Plaintiff \$3,500.00 in attorney’s fees because (a) the Plaintiff did not request attorney’s fees, (b) the court issued the Rule to Show Cause and not the Plaintiff, (c) the Rule to Show Cause did not mention that the court or Plaintiff were requesting attorney’s fees, (d) the Plaintiff did not file an affidavit for attorney’s fees, (e) there is no evidence on the record by which the court could evaluate the factors the court should consider when deciding whether to award attorney’s fees or the amount of such fees, and (f) Ron Ork is

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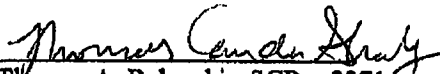
unable to pay \$3,500.00 of attorney's fees to the Plaintiff. (See *Williamson v. Middleton*, 649 S.E.2d 57, 374 S.C. 419 (S.C. App., 2007); *Buist v. Buist* (S.C., 2014))

The movant's counsel affirms that prior to filing the motions the movant's counsel has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matters contained in the motions, consultation would serve no useful purpose, or could not be timely held.

The motions are based upon the applicable Rules of Court, applicable and South Carolina case law, the evidence on record, and any affidavits and/or memorandum which may be filed prior to the hearing. The movant further alleges that the movant is prompt in filing for relief, the existence of meritorious defenses, and the opposing party will not be adversely prejudiced.

Respectfully Submitted by:

A BUSINESS LAW FIRM, LLC


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January 13, 2015

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2015 JAN 13 PM 1:22
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Spartanburg Buddhist Center of)
 South Carolina)
)
 Plaintiff,)
)
 vs.)
)
 Ron Ork and Luke Dong)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 C.A. NO.: 2014-CP-42-1622

ORDER

NOW COMES BEFORE THE COURT Defendant's Motion for Reconsideration, dated January 13, 2015. The present action arises out of the Court issuing a Contempt Order to the Defendant Ron Ork. Mr. Ork is required to pay \$3,500 of attorney's fees to Plaintiff within 45 days of the date of the Contempt Order. Mr. Ork is also ordered to pay \$59,765.30 within 90 days of the date of the Contempt Order. Failure to do so would result in 5 months imprisonment.

NOW, THEREFORE, IT IS ORDERED that the Defendant's motion, dated January 13, 2015 is denied.

AND IT IS SO ORDERED.

R. Keith Kelly
 The Hon. R. Keith Kelly
 Seventh Judicial Circuit

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 M. HOPE BRADLEY


February 20, 2015
 Spartanburg, South Carolina



Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 21, 2016


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Attorneys for Appellants

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