

First Team Hyundai, LLC dba Hilton Head
Hyundai

Greg S. Hackney

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Crystal H. Swinford	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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
- STAYED DUE TO BANKRUPTCY**
- 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: Plaintiff's Motion for Reconsideration of this Court's Order, dated October 31, 2017, denying Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction is respectfully denied without rehearing.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

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:		

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DEC 13 2017
SC Court of Appeals

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2142
Judge Code

Date



Jasper Common Pleas

Case Caption: First Team Hyundai, Llc Dba Hilton Head Hyundai VS Gregory Hackney
Case Number: 2017CP2700386
Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
FIRST TEAM HYUNDAI, LLC d/b/a)
HILTON HEAD HYUNDAI,)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2017-CP-27-00386

PLAINTIFF,

ORDER DENYING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION

v.

GREG S. HACKNEY,

DEFENDANT

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SC Court of Appeals

THIS MATTER came before the Court on Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction filed with this Court on September 22, 2017 and Plaintiff's Amended Motion for Temporary Restraining Order and/or Preliminary Injunction filed October 6, 2017. A hearing was held on October 24, 2017. Present at the hearing were John Lyons, as representative for Plaintiff First Team Hyundai ("Plaintiff"), Plaintiff's Counsel, Bradford N. Martin, and Defendant Greg S. Hackney, appearing *pro se*. Having reviewed the pleadings in this matter, relevant case law, and having heard the arguments of the parties, for the following reasons, Plaintiff's Motion is Denied.

BACKGROUND

Plaintiff is engaged in the business of automotive sales and repair and claims a good reputation in the community is crucial to this business. Defendant, by all accounts, a dissatisfied customer, has been appearing daily outside of Plaintiff's place of business and admits to accusing the dealership of lying and committing fraud by way of written signs and oral statements to passers-by. On September 4, 2017, Plaintiff issued a Trespass Notice to the Defendant, at which time the Defendant moved to the right-of-way in the highway adjacent to Plaintiff's business. Plaintiff filed

a Summons and Complaint on September 17, 2017 for Injunction and Defamation and claims Defendant is engaged in both libel and slander as he is using written signs and making allegedly defamatory statements to passers-by. Plaintiff now seeks an order restraining and enjoining Defendant from publishing allegedly defamatory statements about the Plaintiff, whether in writing or orally as well as any other person or entity, in like manner, who are in active concert or participation with the Defendant.

ANALYSIS

To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. *Denman v. City of Columbia*, 691 S.E.2d 465 (S.C. 2010). A preliminary injunction is an extraordinary remedy never awarded as of right; in each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365 (U.S. 2008).

Irreparable Harm

A plaintiff must make a "clear showing" that he is likely to suffer irreparable harm if the preliminary injunction is denied. *Hodges v. Abraham*, 253 F. Supp. 2d 846 (D.S.C. 2002). Plaintiff's Complaint and motions for injunctive relief provide only conclusory statements regarding irreparable harm to the Plaintiff. The affidavit provided in support of these allegations states that multiple calls were received reporting the Defendant's actions to the Plaintiff, and that out of these calls, two callers stated they decided not to do business with the Plaintiff based on the Defendant's actions. However, the Plaintiff did not establish that the callers in question based their decision on the alleged defamatory comments at issue in this case. At the hearing, Mr. Lyons testified regarding the customer service index numbers from the past quarter but was unable to

attribute any decline to the Defendant with specificity. Mere conjecture is not sufficient as it is not enough for a Plaintiff to show the possibility of irreparable injury; rather, it must "demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365 (U.S. 2008) (emphasis in original). Accordingly, this Court finds Plaintiff has failed to satisfy his burden that it is likely to suffer an irreparable injury if its motions for a temporary restraining order and/or preliminary injunction are not granted.

Given this conclusion, the Court need not address the other prongs of the preliminary injunction analysis required for a temporary injunction. See *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365 (U.S. 2008) (failure to prove even one factor necessary for a preliminary injunction will preclude such relief). However, it is important to note that even if the Plaintiff had established the existence of some irreparable harm, the balance of harms would still weigh in favor of denial as Defendant has demonstrated he would suffer damages of the most serious kind if an injunction was issued, a violation of his free speech rights under the First Amendment. Plaintiff has not shown the danger to be avoided to be so great or so imminent as to justify the invasion of constitutional freedoms.

Prior Restraint

It is a well-settled principle at the intersection of First Amendment law and preliminary injunctive relief practice that the loss of First Amendment freedoms, even for short periods of time, constitutes "irreparable injury." See *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"). Further, prior restraints, in the form of preliminary injunctions to "enjoin a libel," are "prior restraints on speech and publication [which] are the most serious and least tolerable infringement on First Amendment rights." *Tory v. Cochran*, 544 U.S. 734, 738, 125

S. Ct. 2108, 161 L. Ed. 2d 1042 (2005). As a result, injunctive relief has not traditionally been available in actions for slander or libel and has been found to be constitutional only in exceptional cases¹ none of which are present in the instant case. *Tory v. Cochran*, 544 U.S. 734, 738, 125 S. Ct. 2108, 161 L. Ed. 2d 1042 (2005).

CONCLUSION

Based on the foregoing, Plaintiff's motions for a temporary restraining order and/or preliminary injunction in this matter is hereby denied.

IT IS ORDERED.

Carmen Tevis Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

October ____, 2017
Ridgeland, South Carolina

¹ Exceptions initially were limited to speech threatening the nation's military security, obscene speech, or "incitement to acts of violence and the overthrow by force of orderly government." *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). Modern cases considering the question have permitted independent grounds for equitable relief including the protection of property rights, to restrain illegal conspiracies or coercion, or to avoid multiplicity of actions to not be inhibited merely because of the fact that its exercise involves prior restraint on publications. 47 A.L.R.2d 715 (Originally published in 1956).



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