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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Apr 09 2020

COUNTY OF ANDERSON

SC Court of Appeals

Don Stegall,

C.A. No.: 2019-CP-04-02598

Plaintiff,

vs.

**ORDER ON PLAINTIFF'S MOTION
FOR INJUNCTION OR RESTRAINING
ORDER**

Joshua Clay Hillis, Sr.,

Defendant.

The above-entitled matter came before the court on January 22, 2020 pursuant to Plaintiff's Motion for an Injunction or Restraining Order as provided for in Rule 65, SCRPC. Specifically, the Motion asks the court to freeze the assets of the Defendant purchased after May, 2019 until the matter is concluded.

In support of his Motion, the Plaintiff incorporated his verified Complaint which alleged two causes of action against the Defendant, one for conversion and the other for a constructive trust. The gist of the Complaint alleges the Defendant stole a large amount of cash from the Plaintiff with which he purchased the twenty-two items set out in Paragraph 7 of the Complaint.

In support of his Motion, the Plaintiff filed affidavits from Charles Gainey, the Plaintiff, and one from his attorney asking the Court to take judicial notice of financial declarations and affidavits of the Defendant filed in Family Court. The Defendant filed no affidavits.

The affidavit of Charles Gainey and the Family Court Affidavits of the Defendant reflect that prior to approximately March 2019, the Defendant was in financial distress. In the summer of 2019, the Defendant began spending large amounts of cash. By rough estimates from the Complaint, the Defendant spent close to \$400,000 between March and December of 2019. He has offered no explanation for his sudden wealth.

In September, 2019, the Plaintiff discovered that three safes hidden in his home had been pried open and a large amount of cash removed. Plaintiff's affidavit also reflects that the Defendant, his stepson by marriage, had access to Plaintiff's home prior to the theft.

The parties acknowledge the Defendant is currently charged with stealing money from the Plaintiff and awaits trial. At this stage, the Defendant has not conceded that the funds he used to purchase the items listed in the Plaintiff's Complaint were purchased with the Plaintiff's funds, thus the ownership of the purchased items is in issue.

The granting of a restraining order rests within the sound discretion of this court. Atwood Agency v. Black, 374 S.C. 68, 646 S.E.2d 882 (2007). Restraining orders are equitable in nature. Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833 (2005). To be entitled to a restraining order, the Plaintiff must demonstrate irreparable harm, a likelihood of success on the merits, and no adequate remedy at law. Id.

The court finds one spending another's money obtained through theft creates a rather obvious irreparable harm. According to the Plaintiff's affidavit, the Defendant has traveled to Las Vegas, Colorado, Utah, Key West, and California twice. The Plaintiff will never recover the funds spent by Defendant on those trips. Allowing the Defendant to sell the items listed in the Complaint will furnish a great deal of cash for the Defendant to spend or hide.

As to the likelihood of success it appears the Plaintiff has met that burden. The Plaintiff's sudden loss and the Defendant's sudden wealth speaks volumes about the merits of the Plaintiff's claim. Coupled with the arrest of the Defendant for stealing Plaintiff's money, in which probable cause was found by a magistrate, the court concludes success by the Plaintiff as likely.

Finally, the Plaintiff must demonstrate he has no adequate remedy at law. The Defendant

points out that Plaintiff's suit for conversion is at law and the remedy of attachment is a remedy at law. He cites County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002).

The County case involved the request for a temporary injunction closing a business for violating a sexually oriented business ordinance. The Court refused to close the business before the matter was heard on the merits. Unlike this present case, the Plaintiff does not seek to close Defendant's business but to prevent Defendant from selling or disposing of assets until the matter is resolved on its merits. In County, the court expressed the purpose of a temporary injunction is to preserve the existing status during litigation.

In Scratch Golf v. Dunes West, 361 S.C. 117, 603 S.E.2d 905 (S.C. 2004), the Court reversed the grant of a temporary injunction against the Defendant because the Plaintiff had an adequate remedy at law which was attachment. The Court held that the purpose of attachment is to take the property into legal custody so that it may be applied to the Plaintiff's judgment.

After the Scratch Golf decision, the Court heard the Grosshuesch case. In Grosshuesch, the Court held that a preliminary injunction was appropriate in part because the location of the missing funds was unknown. The Court went on to freeze the bank accounts, assets and property purchased with the missing funds.

The Plaintiff's Complaint also seeks a constructive trust over property purchased with the Plaintiff's stolen funds. Constructive trusts are resorted to in equity to vindicate rights or frustrate fraud. All v. Prillaman, 200 S.C. 279, 20 S.E.2d 741 (1912). At this stage the Defendant has not conceded that the funds he used to purchase the items listed in the Plaintiff's Complaint were purchased with the Plaintiff's funds, thus the ownership of the purchased items is in issue.

After reviewing the pleadings, affidavits submitted, cases cited by the respective attorney and the arguments of counsel, the court finds the Plaintiff is entitled to a preliminary injunction.

The Defendant is enjoined from disposing of, encumbering, or damaging any of the items set forth in Paragraph (7) of the Plaintiff's complaint. Should the Defendant not be in the possession of these items, the Defendant's attorney shall certify that in writing to the court and Plaintiff's counsel that his client does not possess the item. IF the Defendant was previously in possession of any of said items and disposed of them prior to today's hearing, the name and address of the recipient of the particular item should be provided to the Plaintiff's counsel. This order is without prejudice to other party's right to assert their respective claims. Either party may bring this matter back before the court should there be a resolution of the criminal case or new matters brought in discovery. No bond is ordered.

The Defendant is not enjoined from the use of the items in the ordinary course of his business.

Either party may apply to this Court to release or add to the list of frozen items and this Order is without prejudice to either party with respect to proving the merits of this action.

The Court will not require a bond based on the continued possession and use of the items by the Defendant.

IT IS SO ORDERED.

R. Scott Sprouse
Tenth Circuit Court Judge

Date: _____

Anderson, South Carolina



Anderson Common Pleas

Case Caption: Don Stegall VS Joshua Clay Hillis Sr
Case Number: 2019CP0402598
Type: Order/Temporary Injunction

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit