

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Don Stegall,

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

Plaintiff,

v.

**DEFENDANT’S RULE 59(e)
MOTION TO RECONSIDER**

Joshua Clay Hillis, Sr.,

Defendant.

Defendant Joshua Clay Hillis, Sr. (hereinafter “Defendant”), by and through his attorneys, respectfully moves this Court pursuant to Rule 59(e), SCRPC and other applicable law, to reconsider, alter, or amend the Form 4 Order rendered by the Honorable R. Scott Sprouse on or about January 28, 2020 (hereinafter the “Order”)¹ concerning Plaintiff’s Motion for Injunction or Restraining Order (hereinafter “Plaintiff’s Motion”) based upon the following reasons:

1. The Order Fails to Set a Bond for Plaintiff’s Injunction / Restraining Order.

Plaintiff’s Motion sought relief pursuant to Rule 65, SCRPC. In the Court of Common Pleas, **“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.” Rule 65(c), SCRPC (emphasis added).

The Order enjoins Defendant from encumbering or disposing of real and personal property allegedly worth over Three Hundred Thirty Nine Thousand Dollars (\$339,000). Compl, ¶ 7. The Order does not require Plaintiff to post a bond for this injunction, which is an error of law. See

¹ The Form 4 Order references a subsequent “formal order” to be prepared by Plaintiff’s counsel. On or about January 29, 2019, Plaintiff’s counsel filed two alternative versions of the proposed “formal order” because the parties’ attorneys disagreed on the proposed language of the order. As of the filing of this Motion, neither proposed order appears to have been e-filed by Judge Sprouse. For the sake of clarity, this Motion respectfully requests that Judge Sprouse reconsider his ruling in both the Form 4 Order and whichever version of the “formal order” might be signed.

Atwood Agency v. Black, 374 S.C. 68, 646 S.E.2d 882, 884 (2007) (“The circuit court’s order requiring only a nominal security bond [of \$250] does not satisfy Rule 65(c) 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.”) Accordingly, the Order must be altered or amended to set a bond if Plaintiff’s injunction remains in place.

2. The Order Contains Insufficient Factual Findings.

“Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained[.]” Rule 65(d), SCRCP.

The Form 4 Order does not set forth, in specific terms “in reasonable detail,” the factual basis for granting Plaintiff’s Motion. Id. Additionally, the Form 4 Order and the proposed formal orders would enjoin Defendant from encumbering over \$339,000 of property by way of reference to Paragraph 7 of the Plaintiff’s Complaint. Paragraph 7 of the Complaint contains vague and non-legal descriptions of various assets that do not adequately identify and describe in detail the items sought to be restrained, including “Enclosed trailer[.]” “Son’s auto[.]” “Daughter’s auto[.]” “Golf Car[.]” “Work van[.]” and “BMW[.]” Compl., ¶7.

Accordingly, the Order must be altered or amended to comply with Rule 65(d), SCRCP.

3. The Factual Record Before the Court is Insufficient to Grant Plaintiff’s Motion.

To obtain a temporary injunction, Plaintiff must prove: (1) irreparable harm; (2) a likelihood of success on the merits; and (3) “the absence of an adequate remedy at law.” Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833, 834 (2005). While Plaintiff’s Motion relies heavily upon Grosshuesch, the conflicting and circumstantial evidence concerning the alleged

disappearance of Plaintiff's cash is distinguishable from the land and tangible asset transfers which were admittedly and undisputedly transferred to the enjoined parties in Grosshuesch. Id.

The affidavits presented in support of Plaintiff's Motion do not clearly demonstrate that Defendant stole Plaintiff's cash and that Defendant used such cash to purchase the property at issue. Instead, Plaintiff asks the Court to "connect the dots" and assume that Plaintiff's allegations are true as plead. Pl.'s Aff., ¶ 11. While Charles Gainey claims that Defendant said he "stole it from somebody in Baton Rouge[.]" (Aff. of Gainey, ¶ 4), Defendant's Affidavit avers that he is "not guilty of these charges" and that the "evidence against me is so weak that three of the four warrants were dismissed [...] due to a lack of probable cause." Pl.'s Ex. 4, ¶¶ 4–5. The fact that Defendant remains under indictment for one charge arising out of this controversy is not sufficient grounds to grant a temporary injunction. See County of Richland v. Simpkins, 348 S.C. 664, 670, 560 S.E.2d 902 (S.C. App. 2002) (finding that "mere citations and accompanying affidavits" are "insufficient" to justify a preliminary injunction because the "citations remain unadjudicated").

Considering that the conflicting and circumstantial evidence before the Court, there is insufficient factual support to justify the extraordinary and extensive injunction requested in Plaintiff's Motion and the Order should be amended and altered to deny Plaintiff's Motion.

4. Plaintiff has an Adequate Remedy at Law.

"[A]n injunction must be reasonably necessary to protect the legal rights of the plaintiff pending in the litigation." Id. at 669 (citations omitted); see also Scratch Golf v. DUNES WEST, 361 S.C. 117, 121, 603 S.E.2d 905 (2004) ("An injunction is a drastic remedy[.]")

Plaintiff's Motion essentially argues that Defendant must be enjoined from selling property so that Defendant has assets to satisfy a potential judgment. The Supreme Court has rejected this argument. See Scratch Golf, 361 S.C. at 122 ("This argument that Scratch Golf asserted – that

once it receives a money judgment from its contract and tort action, it may have difficulty *collecting* from [Defendant] [...] is not proper justification for why a preliminary injunction should be issued[.]” (emphasis original).

Since Plaintiff has plead a cause of action for conversion, Plaintiff has an adequate remedy at law in the form of money damages should Plaintiff prevail on the merits. See id. at 121-122 (ruling that injunctive relief was improper “because there was an alternative remedy at law”); see also Grosshuesch, 623 S.E.2d at 835 (noting that “*Scratch Golf* was an action at law” and “[t]his case is an equitable action in which the assets sought to preserved” are the subject of the dispute).

If Plaintiff can actually prove that Defendant stole his cash, Plaintiff has ample remedies at law to recover money damages from Defendant and to seize assets which are traceable to the stolen cash. For these reasons, the Order should be altered or amended to deny Plaintiff’s Motion.

5. The Order Fails to Consider and Weigh the Equities of Plaintiff’s Motion.

“Actions for injunctive relief are equitable in nature.” Grosshuesch, 623 S.E.2d at 834 (citation omitted). In deciding whether to grant a temporary injunction, “[t]he equities on **both sides must** be taken into account” and the court’s order must “balance the equities” based on the “particular facts” of the case. Simpkins, 348 S.C. at 671 (citation omitted) (emphasis added).

The Order must be amended or altered because it fails to specifically identify and weigh the equities of both Plaintiff and Defendant based on the “particular facts” of this case. Id. For example, the Order does not address whether Plaintiff’s inequitable behavior bars his seeking temporary equitable relief under the doctrine of unclean hands.² The Order also fails to identify and weigh the competing interests at stake, namely the extremely negative effect the injunction

² With respect to “unclean hands,” one of the Affidavits in support of Plaintiff’s Motion states that Plaintiff came to Defendant’s home with a gun to intimidate Defendant and threatened Defendant to flee town. Pl.’s Ex. 4, ¶¶ 13-14.

would have on Defendant's freedom and finances versus the Plaintiff's interest in freezing assets to satisfy a potential judgment before Plaintiff has proven the merits of his case. See Scratch Golf, 361 S.C. at 122 (holding that preserving assets to collect a potential money judgment "is not proper justification" to grant a preliminary injunction); see also Simpkins, 348 S.C. at 671 ("Closing Mr. Lucky's without first adjudicating the merits of the citations would not preserve the parties' positions pending the final hearing on the underlying merits of the actions.")

For the reasons stated above, Defendant Joshua C. Hillis, Jr. respectfully moves the Court to reconsider, alter, and amend its Order concerning Plaintiff's Motion for Injunction or Restraining Order.

Respectfully Submitted,

BRUMBACK & LANGLEY, LLC

/s/ John H. Scully

Christopher T. Brumback / S.C. Bar No. 75410

Spencer D. Langley, S.C. Bar No. 77686

John H. Scully / S.C. Bar No. 100744

531 S. Main Street, Suite 307

Greenville, SC 29601

(864) 414-9097 (Phone)

(866) 728-1205 (Fax)

john@brumbacklangley.com

Attorneys for Defendant

February 6, 2020

Greenville, South Carolina