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| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF BEAUFORT ) | CASE NUMBER: 2015-CP-07-2937 |
| ) | |
| KIM LIKINS ) | |
| ) | **ORDER DENYING PERMANENT** |
| Plaintiff, ) | **INJUNCTION AND SENTENCING C.C.** |
| ) | **"SKIP" HOAGLAND FOR CONTEMPT.** |
| v. ) | |
| ) | |
| C. C. "SKIP" HOAGLAND ) | |
| ) | |
| Defendant. ) | |
| ) | |

This matter came before the Court for trial and final disposition on March 9, 2020. Also, before the Court for final ruling was whether Defendant C.C. "Skip" Hoagland ("Defendant" or "Hoagland"), whom the Court held in contempt in the Court's Order filed February 17, 2018, is in civil contempt, criminal contempt, or both, as well as the appropriate punishment for said contempt. Present on behalf of the Plaintiff Kim Likins ("Plaintiff" or "Likins") were Trenholm Walker, Esq., John Linton, Esq., and Gregory M. Alford, Esq. Plaintiff was also present. Present on behalf of Defendant was Barrett Brewer, Esq. Defendant did not to attend the trial on March 9, 2020.

Plaintiff initiated this action against Hoagland on December 10, 2015. In the Complaint Likins sought a permanent injunction and asserted causes of action for defamation, libel, intentional infliction of emotional distress, and invasion of privacy. Plaintiff, through counsel, informed the Court that she was voluntarily dismissing the causes of action for defamation, libel, intentional infliction of emotional distress, and invasion of privacy and was solely pursuing permanent injunctive reliefas the only cause of action for trial.. The injunction Plaintiff seeks would preclude Hoagland from harassing Plaintiff by contacting her or contacting her employer,

her employer's board of directors, and its leadership, and seeking to have employment terminated. The Court proceeded with a bench trial on Plaintiff's request for permanent injunction. At the conclusion of the evidence, the Court addressed the appropriate sanction for Hoagland's contempt.

## FINDINGS OF FACT

The Court finds the following facts were established by clear and convincing evidence.

1. In 2010, the Plaintiff was elected to the position of a Town Council Member for the Town Council for the Town of Hilton Head Island (the "Town"). The Parties stipulated for the purposes of this action, that Plaintiff Likins was a public official as contemplated by New York Times v. Sullivan, 376 U.S. 254, 84 S. Ct. 710 (1964);.
2. Hilton Head is a resort community. The Town collects and distributes Accommodations Tax (ATAX) pursuant to state and local law. Each year the Town Council must approve of the distribution of the ATAX funds including the thirty percent (30%) mandated to be distributed to the Designated Marketing Organization ("DMO") for the participating jurisdiction. See S.C. Code § 6-4-10. The Hilton Head Island-Bluffton Chamber of Commerce ("Chamber") has received funds as the Town's DMO for many years.
3. In 2015, the Town and the Chamber began to negotiate a contract to further define their relationship that included metric-based performance standards, auditing requirements, and increase the oversight of the DMO's performance.
4. Hoagland asserted, among other things, that the contract between the Town and the Chamber needed to include a requirement for a forensic audit. Hoagland has appeared, and continues to appear, at council meetings, asserting his positions during the public comment portion of the meetings. He also regularly sends extensive e-mails accusing the Chamber, the Town, and the officials of both as being corrupt and guilty of assorted misconduct.

5. In July of 2015, Hoagland e-mailed Likins requesting to meet with her regarding the proposed contract between the Town and the Chamber. In the same e-mail he asked "[a]lso what can I do to help the boys and girls club." Likins replied and explained that she was not meeting privately with any individual concerning the proposed Chamber contract, but requested he submit in writing any information he wanted to the full Town Council to consider.

6. Hoagland in an e-mail from Hoagland to Likins and a third person on October 28, 2015, Hoagland stated: ". . . if Kim Likins votes against the forensic audit of Bill miles and this Hhi chamber I will ask that she be booted off town council ***and removed from the Boys and Girls club*** *for violating the public trust*."

7. After her vote on November 17, 2015, Likins testified, the attacks from Hoagland became more focused on her role at the Boy & Girls Club. For example, on November 23, 2015, after midnight, Hoagland sent an e-mail to Likins and others that stated, in part: "Kim you are not fit to serve boys and girls a well. You fully know what you did !!!"

8. Additionally, Hoagland contacted several members of the Board of Directors of the Boys and Girls Club and demanded that she be fired.

9. Plaintiff filed this action and a Motion for Temporary Injunction on December 10, 2015, approximately one week after Hoagland began contacting board members of the Boys & Girls Club and demanding that Likins be fired. Hoagland consented to a Temporary Injunction, which restrained and enjoined him as follows:

> 1. Defendant will not publish any statement to any third party about Plaintiff's employment at the Boys and Girls Club.
>
> 2. Defendant will make no statement to any third party referring to Plaintiff's fitness for her job or her fitness to be around children.

3. Defendant will not refer to Plaintiff's employment with the Boys and Girls Club in any statements made to a third party.

10. Hoagland violated that order. After Hoagland violated that order, the parties entered into a Consent Order on September 8, 2016 wherein Hoagland acknowledged the violation and agreed to comply with it in the going forward. At the same time Hoagland signed a Settlement Agreement agreeing to pay the costs and attorneys' fees associated with the September 8, 2016 Consent Order.

11. Following court required mediation of the case, Plaintiff filed a Motion for Sanctions because Hoagland published Plaintiff's settlement demand, which was made only in the confines of a mediation, to numerous third-parties via e-mail. The undersigned denied the Motion for Sanctions, but entered an Order Prohibiting Pretrial Communications and Publicity. That Order provided as follows:

> 1. The parties, their attorneys and staff, consulted or retained experts as well as any other servants, agent and/or employees of the above are prohibited from making ANY extra-judicial comments about this case to the media and any third parties about any aspect of this action until a jury verdict has been returned.
>
> 2. Nothing contained in this Order is intended to be nor shall be construed as a prior restraint on the media's ability to report on this case.
>
> 3. Any and all communications between counsel[1] of record shall be conducted solely by the attorneys and/or their staff. The parties are expressly prohibited from communicating directly or indirectly with or to opposing counsel. Nothing contained in this Order prohibits the parties from responding to opposing counsel's questions posed in deposition(s), answering discovery requests under the guidance of their counsel or participating in any subsequent hearing or trial.

[1] Reportedly, the Defendant has engaged in a pattern of communicating directly with Plaintiffs counsel by E-mail and/or otherwise.

4. This Order is not intended to prohibit legitimate, good faith communications with
third parties (excluding the media) in the preparation of this case.

5. Nothing contained in this Order is intended to nor shall abridge any persons affected by this Order ability to exercise their First Amendment rights as long as by doing so they do not contravene the prohibitions contained herein.

12. After Hoagland repeatedly violated the Order Prohibiting Pretrial Communications and Publicity, Plaintiff filed a Motion for a Rule to Show Cause on January 4, 2018.

13. A Rule to Show Cause was issued January 24, 2018 and a hearing was held on January 30, 2018. Hoagland appeared on January 30, 2018 and elected not to testify.

14. On February 7, 2018, the Court entered an Order Finding Defendant In Contempt of Court, finding by clear and convincing evidence that the e-mails sent by Hoagland that were submitted in support of the contempt violated the order and the violations were willful. The undersigned also found Hoagland failed to present any evidence establishing a defense or inability to comply with the order. The order explained that among the e-mails were examples of communications by Hoagland to numerous third parties about the subject matter of this case; communications by Hoagland directly to counsel for the Plaintiff; and an admission by the Hoagland that he contacted a witness following her deposition in this case to discuss the questions posed to her at the deposition. The order also stated in a footnote that included in the e-mails submitted to the court were multiple examples of Hoagland directly e-mailing the Court about this case.

15. While finding Hoagland in contempt, the Court held in abeyance, until the end of the case, the decision of whether to find him in civil contempt, criminal contempt, or both, as well as the appropriate punishment. The Court also noted that

"Defendant's actions from now until the end of the case may inform the Court's ultimate decision."

## CONCLUSIONS OF LAW

An injunction "is a prohibitive writ that forbids a party from taking some action" 12 S.C. Jur. Equity § 19 (citing Black's Law Dictionary (5th ed.) p 705-06). The issuance of an injunction, which rests within the sound discretion of a trial court, depends upon the equities between the parties, and if a great injury would be done to the defendant with little benefit to the plaintiff, the trial court should refuse equitable relief. See Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993); Shaw v. Coleman, 645 S.E.2d 252, 260, 373 S.C. 485, 500 (Ct. App. 2007) ("Balancing the benefits of an injunction to the Shaws and the Snowdens against the inconvenience and damage to Coleman, we hold the trial court correctly granted the injunction."). "The function of an injunction is not to afford a remedy for what is past, but to prevent future mischief." Augusta Power Co. v. Savannah River Electric Co., 163 S.E. 822, 825 (1930) (citing 32 Corpus Juris, 45); see also, Shaw, at 260, 254, 373 S.C. at 500; 42 Am. Jur. 2d Injunctions § 2 ("Whether interlocutory or final, injunctive relief is ordinarily preventive or protective in character and restrains actions that have not yet been taken.").

The power of the court to grant an injunction is in equity. Strategic Resources Co. v. BCS Life Ins. Co., 627 S.E.2d 687, 689, 367 S.C. 540, 544 (2006) (citing Doe v. South Carolina Med. Malpractice Liability Joint Underwriting Ass'n, 347 S.C. 642, 557 S.E.2d 670 (2001). "The court will reserve its equitable powers for situations when there is no adequate remedy at law." Id. (citing Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989)).

When a court sits in equity an "adequate remedy at law" is "one which is as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 751 S.E.2d 664 (Ct. App. 2013) (citations omitted). In "deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case." Strategic Resources, at 689, 367 S.C. at 544 (citing omitted).

The standard of law for a Permanent Injunction in this case is governed by the New York Times v. Sullivan standard as stipulated to by the parties, pursuant to that Stipulation Resolving Defendant's Motion for Partial Summary Judgment Filed October 30, 2017. Pursuant to stipulated items 1) and 3), all causes of action alleged by the Plaintiff are subject to this heightened standard, which requires Plaintiff to prove by clear and convincing evidence that the Defendant acted with Actual Constitutional Malice as a prerequisite to any finding in favor of Permanent Injunctive Relief. See Ex. A, Stipulation Resolving Defendant's Motion for Partial Summary Judgment Filed October 30, 2017.

Jurisprudence from around the country, on the Constitutional issue of permanent injunctions, further supports what the parties have stipulated to, that the Court must find that the Plaintiff met her burden by clear and convincing evidence, that Hoagland acted with actual constitutional malice. It is a rule of general application in the United States that equity will not enjoin the publication of defamatory matter in the absence of a contractual or trust relation. An early case announcing that principle is Brandreth v. Lance, 8 Paige, N.Y., 24, decided in 1839. Headnotes of that case are as follows: "The court of chancery has not jurisdiction to restrain the publication of a libel, by injunction, upon a bill filed by the party whose character or business will

be injured by the publication. An injunction to restrain a publication can only be granted in cases where the publication will interfere with the complainant's right either of literary or other property in the subject matter of the publication." See also Menard v. Houle, 298 Mass. 546, 11 N.E.2d 436, 437 ("[E]quity will take jurisdiction where there is a continuing course of unjustifed and wrongful attack upon the plaintiff motivated by actual malice, and causing damage to property rights as distinguished from 'injury to the personality affecting feelings, sensibility and honor . . . .'"); See also Auburn Police Union v. Carpenter, 8 F.3d 886, 903 (1st Cir. 1993) (stressing that an injunction of charitable solicitation was permitted only "after a final adjudication on the merits that the speech is unprotected"); Paradise Hills Assocs. v. Procel, 1 Cal. Rptr. 2d 514, 519 (Ct. App. 1991) ("A preliminary injunction is a prior restraint."); Cohen v. Advanced Med. Grp. of Ga., Inc., 496 S.E.2d 710, 711 (Ga. 1998) (overturning a preliminary injunction against libel on the grounds that the injunction was not "entered subsequent to a verdict in which a jury found that statements made by [defendant] were false and defamatory" (quoting High Country Fashions, Inc. v. Marlenna Fashions, Inc., 357 S.E.2d 576, 577 (Ga. 1987))); Hartman v. PIP-Grp., LLC, 825 S.E.2d 601, 606 (Ga. Ct. App. 2019) ("We have found no Georgia case upholding an interlocutory injunction prohibiting speech . . . . [*A]n injunction [against publication] has been upheld only when it 'was entered subsequent to a verdict in which a jury found that statements made by [the defendant] were false and defamatory*.'" (emphasis added) (internal citation omitted)); Mishler v. MAC Sys., Inc., 771 N.E.2d 92, 98-99 (Ind. Ct. App. 2002) (condemning a preliminary injunction issued "after only the most preliminary of determinations by the trial court"); St. Margaret Mercy Healthcare Cent., Inc. v. Ho, 663 N.E.2d 1220, 1223-24 (Ind. Ct. App. 1996) (dissolving a preliminary injunction on First Amendment grounds, because speech cannot be restricted "before an adequate determination that it is unprotected by the First Amendment"); Anagnost v. Mortg.

Specialists, Inc., No. 216-2016-CV277, 2016 WL 10920366, at *3 (N.H. Super. Ct. Aug. 4, 2016) ("[B]y asking for a preliminary injunction, the plaintifs seek to enjoin Gill from making statements that have not yet been found to be unprotected.") (emphasis omitted).

Under the First Amendment prior restraint is highly disfavored, and the party seeking such restraint bears a heavy burden of showing a justification for such restraint. New York Times Co. v. United States, 403 U.S. 713, 714 (1971). A prior restraint is a "judicial order forbidding certain communications...issued in advance of the time that such communications are to occur." Alexander v. United States, 509 U.S. 544, 550. "So drastic a remedial device may only be imposed when it furthers 'the essential needs of the public order.'" Sindi v. El-Moslimany, 896 F.3d 1, 32 (2018) (quoting Carrol v. President & Comm 'rs of Princess Anne, 393 U.S. 175, 183 (1968)). "A prior restraint on speech must survive the most exacting scrutiny demanded by our First Amendment jurisprudence." Sindi, 896 F.3d at 32. The Court finds the Sindi case instructive as there the United States Court of Appeals for the First Circuit found that an injunction against defamatory speech was clearly a prior restraint and failed to meet the level of scrutiny so demanded.

In determining whether a defamation plaintiff is a limited-purpose public figure, the Court must examine: first, whether there was a particular "public controversy" that gave rise to the alleged defamation; and second, whether the nature and extent of Plaintiffs participation in that particular controversy was sufficient to justify "public figure" status in relation to the controversy. Fitzgerald v. Penthouse Int'l, Ltd., 691 F.2d 666, 668 (4th Cir. 1982). Moreover, the Fourth Circuit Court of Appeals has established five factors to be considered in determining whether a person is a limited-purpose public-figure: (1) whether the plaintiff had access to channels of effective communication; (2) whether the plaintiff voluntarily assumed a role of special prominence in a public controversy; (3) whether the plaintiff sought to influence the resolution or

outcome of the controversy; (4) whether the controversy existed prior to the publication of the statement; and (5) whether the plaintiff retained public figure status at the time of the alleged defamation. *Id.*

In making a determination as whether Hoagland acted with Actual Constitutional Malice, the Court must decide whether sufficient evidence was presented to determine Hoagland's subjective state of mind. "Initially we note the 'the actual malice standard is not satisfied merely through a showing of ill will or 'malice' in the ordinary sense of the term. "Ill will toward the plaintiff, or bad motives, are not elements of the *New York Times* standard." See *Old DominionBranch No. 496 v. Austin, 418 U.S. 264, 281, 94 S.Ct. 2770, 2780, 41 L.Ed.2d 745, 760 (1974).* Nor can the fact that the defendant published the defamatory material in order to increase profits suffice to prove actual malice. The allegedly defamatory statements an issue in the New York Times case were themselves published as part of a paid advertisement. 376 U.S. at 376 U. S. 265-266. If a profit motive could somehow strip communications of the otherwise available constitutional protection, our cases from New York Times to Hustler Magazine would be little more than empty vessels.

Actual malice, instead, requires at a minimum that the statements were made with a reckless disregard for the truth. See Harte-Hanks Communications v. Connaughton, 491 U.S. 657,667, 109 S. Ct. 2678, 2686, 105 L. Ed. 2d 562 (1989) Although the concept of "reckless disregard" "cannot be fully encompassed in one infallible definition," St. Amant v. Thompson, 390 U.S. 727, 390 U.S. 730(1968), we have made clear that the defendant must have made the false publication with a "high degree of awareness of ... probable falsity," Garrison v. Louisiana. 379 U. S. 64, 379 U. S. 74 (1964), or must have "entertained serious doubts as to the truth of his publication," St. Amant. supra, at 390 U.S. 731. "Actual malice is a subjective standard testing

publisher's good faith belief in truth of his or her statements". Peeler v. Spartan Radiocasting. Inc., 324 S.C. 261. 478 S.E.2d 282 (1996) (emphasis added). Any direct or indirect evidence relevant to defendant's state of mind is admissible to prove actual malice. Anderson v. Augusta Chronicle, 365 S.C. 589,619 S.E.2d 428 (2005) (emphasis added).

After careful consideration, the Court finds that the injunction should not issue for two reasons: (1) Plaintiff has an adequate remedy at law and (2) that an injunction may violate Hoagland's First Amendment right to free speech.

After careful consideration, the Court declines to issue an injunction because the Court finds that Plaintiff has an adequate remedy at law in the form of a civil suit for damages if Hoagland continues to harassment and the requested injunction may violate Hoagland's constitutional right to freedom of speech.

**CONTEMPT**

As stated above, on February 7, 2018, the Court entered an Order Finding Defendant Hoagland In Contempt of Court, but held in abeyance until the end of the case the decision of whether to find Hoagland in civil contempt, criminal contempt, or both, as well as the appropriate punishment. The Order also stated that "Defendant's actions from now until the end of the case may inform the Court's ultimate decision."

The Court hereby finds that Hoagland's contempt is both civil contempt and criminal contempt. The violations of this Court's Order are numerous and flagrant, as shown by the attachments to the Affidavits of Gregory Alford filed January 16, 2018; January 29, 2018; and March 9, 2020; and the Court's own review of the Island Packet newspaper the morning the trial began, which reflected Hoagland was discussing the case with the media in violation of the order.

With regard to the criminal contempt, the Court hereby sentences Hoagland to 30 days of incarceration and a $2,500 fine. This sentence is suspended to 100 hours community service and

$1000 fine, provided Hoagland pays the $1000 fine and begins community service with 30 days of the filing of this order. For every 1.667 hours (or 1 hour and 40 minutes) of service that Hoagland completes, there will be a one-day reduction of the 30-day sentence, should he fail to complete the full 100 hours within six months of the date of this order.

With regard to the civil contempt, Hoagland is hereby sentenced (consecutively to his criminal contempt) to Thirty (30) days suspended on payment of Plaintiff's reasonable attorney's fees with respect to the contempt proceedings. At the Court's direction, Gregory Alford, Esq. and John P. Linton Esq. filed affidavits of fees date March 17 and 19, 2020. Mr. Alford's affidavit stated based upon the time involved in the contempt proceedings, his firm was entitled to an award of $2,788.50 in fees. Mr. Linton's affidavit stated based upon the time involved in the contempt proceedings, his firm was entitled to an award of $3,315.00 in fees. Hoagland, through counsel, has informed the Court that while Hoagland objects to any fees being awarded, there is no objection concerning the amounts sought by the two law firms representing Plaintiff. After careful consideration, the Court Orders Hoagland to pay Walker Gressette Freeman & Linton, LLC $3,315.00 in attorneys' fees and the Alford Law Firm, LLC $2,788.50 in attorneys' fees. Hoagland has thirty (30) days to pay all attorney's fees ordered.

**IT IS, THEREFORE, ORDERED** that judgment be entered for the Defendant on Plaintiff's cause of action for permanent injunction.

**IT IS FURTHER ORDERED** that Defendant C.C. Hoagland is guilty of civil and criminal contempt.

**IT IS FURTHER ORDERED** that Defendant C.C. Hoagland through his attorney shall pay legal fees of $2,788.50 to Gregory Alford and $3,315.00 of legal fees to Walker Gressette

Freeman & Linton, LLC within thirty (30) days of this Order or Hoagland shall serve thirty (30) days consecutive to his sentence for criminal contempt.

**THIS COURT HEREBY SENTENCES** Defendant C.C. Hoagland to 30 days of incarceration and a $2,500 fine. This sentence is suspended upon 100 hours community service and payment of a $1000 fine, but only if Hoagland pays the $1000 fine and begins community service with 30 days of the filing of this order. For every 1.667 hours (or 1 hour and 40 minutes) of service that Hoagland completes, there will be a one-day reduction of the 30-day sentence, should he fail to complete the full 100 hours within six months of the date of this order.

**AND IT IS SO ORDERED.**

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R. Lawton McIntosh
Circuit Judge

Anderson, South Carolina
July ____, 2020

Beaufort Common Pleas

**Case Caption:** Kim Likins VS C C Skip Hoagland , defendant, et al

**Case Number:** 2015CP0702937

**Type:** Order/Other

S/R. LAWTON McINTOSH

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