

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Coral Resorts, LLC, and)
 Coral Holdings, LLC,)
)
 Plaintiffs,)
)
 vs.)
)
 Ted Morris; Lorraine Morris; Coastal)
 Timeshare Creations, LLC d/b/a Coastal)
 Visitors Center and Coastal Activities;)
 Morr Marketing Enterprises, Inc.;)
 Tom Page; and Scott McCoy,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-07-4328

SECOND ORDER OF CONTEMPT

2013 JAN 29 AM 8:58
 JERRI ANN ROSEMEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

This matter came before the Court on the Petition for Rule to Show Cause ("Petition") filed by Plaintiffs Coral Resorts, LLC ("Coral Resorts") and Coral Holdings, LLC ("Coral Holdings") on October 26, 2012. On December 17, 2012, this Court held a hearing on the Petition. All parties were represented at the hearing. Present for the Plaintiffs were Nekki Shutt, Esq., Drew A. Laughlin, Esq., Kathleen M. McDaniel, Esq., and Brian Lysell, Esq. Present for the Defendants was Joseph DuBois, Esq. Also present at the hearing were Defendants Ted Morris, Lorraine Morris, and Scott McCoy.

Based on the memoranda, affidavits, and evidence submitted by the parties, this Court finds by clear and convincing evidence that the Defendants are in contempt of the Consent Order for Permanent Injunction ("Permanent Injunction") dated September 28, 2010, and this Court imposes meaningful and appropriate sanctions. This is the second time this Court has found the Defendants in contempt of the Permanent Injunction.

All courts have the inherent power to punish for contempt, and the existence of this power is essential to the preservation of order in judicial proceedings. *State v. Havelka*, 285 S.C. 388, 390, 330 S.E.2d 288, 289 (1985); *Benedict v. Benedict*, 280 S.C. 508, 510, 313

S.E.2d 56, 57 (Ct. App. 1984). This power is necessary to the preservation of order in judicial proceedings and to the court's ability to enforce its judgments, writs, and orders. *Curtee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982).

Upon a finding of contempt, a court may imprison and fine a contemnor until such a time as the contemnor comes into compliance with the court's order. *Poston v. Poston*, 331 S.C. 106, 112, 502 S.E.2d 86, 89 (1998); *State ex rel. Love v. Howell*, 285 S.C. 53, 57, 328 S.E.2d 77, 80 (1985). If a contemnor's violation of the court's order causes damage to a plaintiff, the court may also order the contemnor to make the injured plaintiff whole for those damages and for the cost of enforcing the order. *Curtee*, 277 S.C. at 387, 287 S.E.2d at 920. In addition to the foregoing remedies, courts have the power to direct a contemnor to take such other action as they deem necessary to assure full compliance with their orders, including the power to direct the contemnor to shut down his business operations pending such compliance. *Howell*, 285 S.C. at 57, 328 S.E.2d at 80.

FINDINGS OF FACT

The Plaintiffs develop resort properties on Hilton Head Island and sell vacation time-share interests at these resorts. Pursuant to S.C. Code Ann. § 27-32-40 (2007), an individual who purchases a timeshare interest from a timeshare developer, including the Plaintiffs, has a statutory right to rescind the purchase contract within five days. The Defendants are in the business of purchasing and re-selling timeshare interests.

During the Summer of 2010, it came to the Plaintiffs' attention that the Defendants were utilizing certain methods to induce the Plaintiffs' customers to rescind their contracts with the Plaintiffs and purchase a used timeshare from the Defendants. Believing the Defendants' methods to be unlawful, the Plaintiffs filed a Complaint against the Defendants and simultaneously requested a preliminary injunction to stop the Defendants' activities. On September 17, 2010, this Court issued a Temporary Restraining Order against the Defendants. Prior to a hearing on a permanent injunction, the Defendants voluntarily entered into a Consent



Order for Permanent Injunction ("Permanent Injunction"), which Order was approved by this Court and filed on September 28, 2012.

Through the Permanent Injunction, this Court ordered the Defendants to redact particular advertisements in the *Big Fat Coupon Book*. On February 15, 2011, this Court found the Defendants in contempt of the Permanent Injunction for failing to redact the advertisements as required by this Court. Pursuant to the Permanent Injunction, the finding of contempt was an adjudication of the Defendants' liability on the merits of the underlying lawsuit and was to be followed by a separate damages hearing.

The ultimate purpose of the Permanent Injunction is to prohibit the Defendants from targeting, approaching, and soliciting the Plaintiffs' customers and prospective customers. Through the Permanent Injunction, this Court ordered the Defendants to adhere to the following pertinent terms:

- Section 8. Defendants are precluded from entering the premises and parking lot at Coral's sales office at 33 Office Park Road, Suite 218, Hilton Head, South Carolina 29928, and from loitering at or within 75 yards of the entrance and exit thereto.
- Section 10. Defendants are precluded from initiating unsolicited contact with or harassing individuals reasonably identifiable as Coral's customers and prospective customers in person, by telephone, by email, by text, and/or by mail.

Section 15(A) of the Permanent Injunction defines "reasonably identifiable" to include anyone staying at or coming to or from any of the Plaintiffs' resorts, offices, kiosks, properties, and associated hotels or anyone who discloses that he or she is a customer or prospective customer of the Plaintiffs.

The evidence presented to this Court demonstrates that the Defendants have opened a second office within 75 yards of the parking lot of the Coral sales office and engaged in other activities targeted at soliciting individuals that are reasonably identifiable as the Plaintiffs' customers and potential customers.



The Defendants have an office at 2 North Forest Beach Drive, which is the main public beach access on Hilton Head Island and a prime tourist location. In March 2012, the Defendants opened an office at 32 Office Park Road, Hilton Head Island, South Carolina. Defendant Lorraine Morris is the broker-in-charge for Defendant Coastal Timeshare Creations, LLC. She along with Defendant Ted Morris applied for a business license for the 32 Office Park Road location on March 2, 2012. A plat prepared for the Plaintiffs shows that the Defendants' second office is within 75 yards of the entrance to the parking lot of the Coral sales office, is directly across the street from the Coral sales office, and is oriented to provide a view to the parking lot of the Coral sales office.

The Defendants have also placed visible signage on the exterior of this second office. Because of the location of the Defendants' second office, the Plaintiffs' customers and potential customers must pass by the Defendants' second office whenever they are coming to or going from the Coral sales office. The Plaintiffs submitted an affidavit of a local realtor who explains that timeshare resellers generally locate offices in areas of high tourist traffic, such as the Defendants' office at 2 North Forest Beach Drive. The affidavit goes on to state that the Office Park Road area is not generally frequented by tourists other than the Plaintiffs' customers and potential customers.

In addition to the visible signage, the Defendants have utilized another advertising method that the Plaintiffs assert violates the Permanent Injunction. Recent receipts from the BI-LO grocery store located on Pope Avenue have an advertisement from the Defendants on the reverse. The BI-LO on Pope Avenue is in a shopping center directly adjacent to Coral Sands, one of the Plaintiffs' resort properties. The Plaintiffs investigated receipts from the only other BI-LO on Hilton Head Island and found no advertising from the Defendants on the reverse of receipts from this grocery, which is more distant from Coral Sands.

In addition to using their location to target and solicit the Plaintiffs' customers and potential customers, the evidence before this Court demonstrates that the Defendants also have

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solicited individual customers of the Plaintiffs directly. The Plaintiffs submitted affidavits or written statements from four sets of customers whom Defendant Tom Page or another agent of the Defendants solicited in person. The affidavits and written statements allege that Defendant Tom Page or another agent of the Defendants solicited these individuals even after discovering that they were customers of the Plaintiffs. The Plaintiffs also submitted excerpts of Defendant Lorraine Morris's recent telephone records showing that the Defendants made telephone calls directly to at least three of the Plaintiffs' customers after those customers had executed contracts to purchase timeshare interests from the Plaintiffs but before they rescinded those contracts.

To rebut these facts, the Defendants produced only two affidavits. The first is the Affidavit of Ted Morris wherein he asserts that the location and signage at the 32 Office Park Road office are not intended to target the Plaintiffs' customers and potential customers. In the face of the evidence presented by the Plaintiffs, I find the Affidavit of Ted Morris to be of little credibility.

The second is an Affidavit of Scott McCoy wherein he asserts that he required Defendant Tom Page to sign an independent contractor agreement that prohibited the same activities as in the Permanent Injunction.

CONCLUSIONS OF LAW

By opening an office directly across the street from the Coral sales office and within 75 yards of the parking lot at the Coral sales office, the Defendants have violated the prohibitions of Sections 8 and 10 of the Permanent Injunction. The Defendants' second office violates not only the specific distance requirement, but its location enables the Defendants to monitor the comings and goings of individuals who are reasonably identifiable as the Plaintiffs' customers and potential customers. The Defendants' second office location is even more offensive to the purpose of the Permanent Injunction than mere loitering. There is clear and convincing evidence that the Defendants' purpose for opening an office directly across the street from the

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Coral sales office was to target and solicit the Plaintiffs' customers and potential customers. The Defendants, therefore, are in violation of Sections 8 and 10 of the Permanent Injunction.

So long as the Defendants occupy the office at 32 Office Park Road, they are in continued violation of the Permanent Injunction. The only way to halt such ongoing violation is for the Defendants to vacate the office at 32 Office Park Road. The Defendants were aware at the time they entered into the lease that its duration could be less than a year. In a letter to the Defendants' Landlord, dated February 24, 2012, Defendant Scott McCoy stated that he understood and consented to the condition that the lease might be temporary based upon an early termination provision permitting termination of the lease upon 60 days' notice and that there would be no extensions. The lease term, in fact, ends on February 28, 2013. For these reasons, requiring the Defendants to vacate the office at 32 Office Park Road will not work an undue hardship upon the Defendants.

There is also clear and convincing evidence that on at least four occasions, Defendant Tom Page or another agent of the Defendants solicited individuals reasonably identifiable as the Plaintiffs' customers for the sole purpose of inducing those people to rescind their contracts with the Plaintiffs. Such solicitation violates Section 8 of the Permanent Injunction.

As Coastal Timeshare Creation's registered broker-in-charge, its site contact, and one of its principal owners, Defendant Lorraine Morris is subject to a higher statutory standard of care pursuant to S.C. Code Ann. § 40-57-135. The evidence presented to this Court demonstrates that Defendant Lorraine Morris made calls or allowed calls to be made to the Plaintiffs' customers from a cellular telephone registered in her name. Defendant Lorraine Morris also was a co-applicant for a business license for the Defendants' office at 32 Office Park Road. Accordingly, this Court additionally finds that there is clear and convincing evidence that Defendant Lorraine Morris violated the Permanent Injunction willfully and with conscious disregard for its prohibitions.



IT IS HEREBY ORDERED that the Defendants are in civil contempt of this Court's Consent Order for Permanent Injunction. Pursuant to the terms of the Consent Order for Permanent Injunction, this finding of contempt is an adjudication on the merits of the Defendants' liability for the underlying causes of actions set forth in the Plaintiffs' Complaint.

This is the second time this Court has found these Defendants in contempt of the Permanent Injunction, which was issued with the consent of the Defendants after much negotiation. The Defendants' violations of the Permanent Injunction described herein, even in the face of a prior Order of contempt, indicate to this Court that the mere threat of monetary damages is insufficient to compel the Defendants to comply with the Permanent Injunction. The Defendants' continued, willful violations of the Permanent Injunction must be redressed in a manner that forces the Defendants to come into immediate compliance and to remain in compliance in the future.

ACCORDINGLY, IT IS FURTHER ORDERED that the Defendants, by 5 p.m. on January 31, 2013, shall vacate the office at 32 Office Park Road, remove all visible signage from the exterior office and must provide written notice to their Landlord and copy the Court that they intend to terminate their lease for that office.

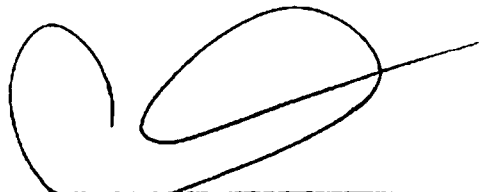
IT IS FURTHER ORDERED that the Defendants shall pay such attorney's fees and costs incurred by the Plaintiffs in bringing this Petition for Rule to Show Cause as this Court deems reasonable based upon such affidavits of attorneys' fees and costs as shall be submitted to the Court within ten business days following receipt of notice of entry of the Court's order.

IT IS FURTHER ORDERED that should the Defendants fail to timely vacate the office at 32 Office Park Road or to comply with any of the notice requirements or the payment of attorneys' fees and costs ordered, the Defendants shall be required to pay a fine of \$500.00 per day to the Court.

IT IS FURTHER ORDERED that the Beaufort County Clerk of Court shall schedule a hearing for damages on the underlying causes of action set forth in the Plaintiffs' Complaint.

IT IS FURTHER ORDERED that the Defendants – which shall include their employees, contractors, and agents collectively – henceforth shall adhere strictly to the Consent Order for Permanent Injunction dated September 28, 2010. In particular, this Court further reiterates that the Defendants are prohibited from targeting, harassing, or soliciting any individuals that are reasonably identifiable as customers or potential customers of the Plaintiffs, including without limitation individuals who disclose that they are customers or potential customers of the Plaintiffs. If this Court finds that any of the Defendants have committed any further violations of the Permanent Injunction, this Court shall consider additional sanctions for civil and criminal contempt.

AND IT IS SO ORDERED.



Carmen T. Mullen
Beaufort County

1/29, 2013
Beaufort, South Carolina