

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
Bonnie Brae Homeowners' Association, Inc.,)	CIVIL ACTION NO. 2016-CP-23-06406
)	
Plaintiff,)	DEFENDANTS' RESPONSE IN
)	OPPOSITION TO PLAINTIFF'S
vs.)	MOTION FOR IMMEDIATE
)	TEMPORARY RESTRAINING
HOA Community Management, LLC, and Charlene Rice,)	ORDER AND MOTION FOR
)	TEMPORARY INJUNCTION
Defendants.)	

TO: MICHAEL DODD, ESQ., ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED.

Please take notice that the Defendants HOA Community Management, LLC., and Charlene Rice (“the Defendants”), by and through undersigned counsel, file this response in opposition to Plaintiff’s Motion for Immediate Temporary Restraining Order and Motion for Temporary Injunction with no notice to Defendants pursuant to Rule 65(e), SCRPC. This response will be supported by further memoranda of law, affidavits, the South Carolina Rules of Civil Procedure and laws of this State.

On November 4, 2016, Plaintiff initiated this lawsuit seeking declaratory and injunctive relief. Also on November 4, 2016, Plaintiff filed a Motion for Immediate Temporary Restraining Order and Motion for Temporary Injunction alleging, among other things, Defendants were engaged in misappropriation of Plaintiff’s funds. The underlying facts of the suit and the motions describe a political battle amongst members of the Plaintiff Association who claim to be directors of the Association’s Board. On November 15, 2016, Plaintiff filed an additional Motion for Immediate Temporary Restraining Order and Motion for Temporary Injunction

requesting explicitly that this Court, “**without the giving of notice** restrain[] and enjoin[] the Defendants, their respective employees, agents, affiliates and all those in active concert or participation with the Defendants or them, from assessing any further fees or issuing any further invoices on behalf of the Plaintiff, or from accessing, and/or transferring and/or disposing of bank accounts, funds, assets of any kind...” See Plaintiff’s Motion for Immediate Temporary Restraining Order and Motion for Immediate Temporary Injunction (emphasis in original), Attached hereto as Exhibit A. This motion was filed in spite of the Court’s scheduling of Plaintiff’s first motion for December 15, 2016. Plaintiff’s subsequent motion requests an emergency order with no notice to the Defendants.

As a threshold matter, Rule 65(a) plainly and explicitly states “[n]o temporary injunction shall be issued *without notice to the adverse party.*” See Rule 65(a), SCRCP (emphasis added). Temporary injunctions are designed to preserve the status quo just prior to the alleged wrongful actions and permit businesses to continue to operate when it must continue to operate to comply with the law. See generally, *County of Richland v. Simpkins*, 348 S.C. 664 (Ct. App. 2002). Here, Plaintiff has asked the Court to grant it relief that directly contradicts the language in Rule 65(a). For that reason alone, the Court should deny Plaintiff’s motion and sanction the costs of having to defend the motion to Plaintiff.

Furthermore, Defendants must continue to perform their functions under the law. Defendant Rice is the owner of Defendant HOA Community Management. HOA Community Management, for the last seventeen years has involved itself in all aspects of community association management. For the last sixteen of those seventeen years, the Bonnie Brae Homeowners’ Association, Inc., has been a client of HOA Community Management. There is a management agreement which existed prior to the controversy under which HOA Community

Management and Rice must perform contractual obligations. Portions of that contract require the Defendants to pay vender contracts for the Plaintiff because that duty has been delegated to the Defendants by Plaintiff. Plaintiff has bills which become due every month and, therefore, the temporary injunction would expose both parties in this matter to late fees, interest, accelerated debts and, potentially, breach of contract actions. To the extent Court is inclined to grant Plaintiff's request, those vendors have an interest in this action and should also be put on notice. Additionally, the Court should require the Plaintiff to produce a bond to protect the Association and the Defendants from the liability described above. However, because the request violates the plain language of the civil rules and because both parties must continue to perform their respective obligations under the law, the Court must deny Plaintiff's request. Defendants further ask the Court to tax the costs of defending a clearly violative motion to the Plaintiff in this matter.

Likewise, Plaintiff's request for a Temporary Restraining Order, without notice to the adverse party, is plainly contrary to the South Carolina Rules of Civil Procedure. Rule 65(e) deals with the use of a temporary restraining order to suspend business and it states "[n]o temporary restraining order shall be granted to suspend the general and ordinary business of an individual, partnership, association or corporation. *Same may be suspended only by injunction after notice.*" See Rule 65(e), SCRPC (emphasis added). For the same reasons cited above the Court must deny Plaintiff's request for a hearing without notice. Defendants are under contract with Plaintiff to perform certain tasks, including paying Plaintiff's vendors, including utility service providers, landscape contractors, etc. Paying vender invoices and distributing assessment notices and conducting meetings for Plaintiff are all in the normal and ordinary course of Defendants' business and they are specifically required by the contract between Plaintiff and

Defendants. The rules indicate an injunction after notice is the only way to suspend such business activity.

For all the foregoing reasons, the Court should deny Plaintiff's request for an emergency order without notice to the adverse parties described herein. The Court should permit the Defendants to present evidence that the temporary injunction and temporary restraining order should not issue.

Respectfully submitted,

McCABE, TROTTER & BEVERLY, P.C.

/s/ J. Ryan Oates

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Columbia, South Carolina
November 18, 2016