

NOT FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

VI TAXI ASSOCIATION,

ST-16-CV-551

Plaintiff,

v.

**THE WEST INDIAN COMPANY, LIMITED,
BLUE EXECUTIVE SERVICES AND
TRANSPORTATION, LLC D/B/A BEST,
KERRY HARRIGAN, AND
TERRI GRIFFITHS,**

Defendants.

MEMORANDUM OPINION

THIS MATTER comes before the Court on Plaintiff VI Taxi Association's (hereinafter "VITA" or "Plaintiff") Emergency Motion for Temporary Restraining Order, Preliminary Injunction Against West Indian Company Limited (WICO) (hereinafter, "Motion") filed on September 23, 2016.¹ Defendants The West Indian Company, Limited, Blue Executive Services & Transportation, LLC d/b/a Best, Kerry Harrigan and Terri Griffiths (collectively, "Defendants") did not file a response. For the following reasons, the Court will grant VITA's Motion and issue a TRO enjoining WICO from awarding the 2016-0001 concession agreement to Blue Executive Services & Transportation, LLC d/b/a Best (hereinafter "Best Taxi") until the matter has been resolved.

FACTS AND PROCEDURAL HISTORY

"The Virgin Islands Taxi Association (hereinafter, "VITA") is a corporation that represents Virgin Islands taxi drivers for a commissioned fee." Compl. ¶3. "VITA has been in existence for over sixty (60) years and is made up of approximately six hundred and fifty (650) drivers." Motion at 5. "VITA has held the franchise to transport cruise ship passengers from the WICO cruise ship dock for over forty (40) years." Motion

¹ According to the Honorable Judge Michael C. Dunston's Order of Recusal, "every other general jurisdiction judge in the St. Thomas/St. John Division of the Court has an actual or potential conflict of interest." See Order of Recusal entered September 23, 2016. The Clerk of the Court randomly reassigned the matter to a judge in the St. Croix Division.

at 5. “On June 1, 2015, The West Indian Company, Limited (hereinafter, “WICO”) issued a request for qualifications 2016-0001 concession agreement for taxi service.” Compl. ¶16, Motion at 5, Pl.’s Ex. 3.

“The request for bids stated that the selected provider would be based on its ability to make available 300 licensed vehicles and to meet the criteria to operate under a concession agreement with WICO as follows:

- a. Proof that each of its members is in good standing with the Taxi Commission;
- b. Certificate of good standing for the company;
- c. Proof of U.S. driver’s license for each driver;
- d. Proof of auto insurance for each member;
- e. Proof the company has insurance in the amount of two million dollars;
- f. Provide a description of prior experience and qualifications in providing concession taxicab services, and;
- g. Provide at least three references familiar with the company’s past services as a taxi concession operator.” Compl. ¶17, Motion at 5-6, Pl.’s Ex. 3 at 1-2.

WICO allegedly “agreed to use the following as criteria to screen, rank and select the successful bidder:

- a. Preference will be given to those organizations with experience related to operating a taxi concession;
- b. Preference to those key staff familiar with the taxicab services at the dock;
- c. Preference will be given to organizations whose personnel have demonstrated a working relationship with a taxicab concession, and;
- d. Preference shall be given to those organizations which have a thorough understanding of the requirements for the taxicab concession and the environment at the cruise ship dock.” Compl. ¶18, Motion at 6-7, Pl.’s Ex. 3 at 4.

“On June 24, 2016, VITA responded to the request for bids and allegedly satisfied all the requirements for bid acceptance.” Compl. ¶19, Motion at 7, Pl.’s Ex. 4. “On September 12, 2016, VITA was notified that it had not been selected and that the Dock Taxi Concession had been awarded to Best Taxi effective October 1, 2016.” Compl. ¶¶20, 23, Motion at 7, Pl.’s Ex. 5.

Best Taxi allegedly “does not have 300 drivers, has never operated a taxi concession, does not have the required insurance and other requirements necessary to have been selected as the bid recipient.” Compl. ¶21, Motion at 1-2,7. VITA was allegedly “the only bid applicant that qualified under the bid requirements to receive the bid for the WICO Dock Taxi Concession.” Compl. ¶22.

On September 21, 2016, VITA filed a Complaint.² Defendants Terri Griffiths (hereinafter, “Griffiths”) and Kerry Harrigan (hereinafter, “Harrigan”) filed an Answer on September 26, 2016. None of the other Defendants responded to the Complaint. On September 23, 2016, VITA filed the instant Motion, along with an affidavit of Winston Parker, in his capacity as the President of the Virgin Islands Taxi Association. VITA moves for a temporary restraining order and a preliminary injunction to enjoin “WICO from awarding Best Taxi the 2016-0001 concession agreement for taxi services at WICO Cruise Ship Dock.” Motion at 1.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 65 (hereinafter, “Rule 65”) governs temporary restraining orders (hereinafter, “TRO”) and preliminary injunctions.³ Precedents from the Supreme Court of the Virgin Islands (hereinafter, “Supreme Court”) establish that the Superior Court shall consider four factors in deciding a motion for temporary restraining order and preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.⁴

² Defendants Terri Griffiths who represents herself and Kerry Harrigan and the attorney representing WICO were served with the Complaint on September 21, 2016. Plaintiffs attempted to serve Kerry Harrigan, but he could not be located. WICO was served in person with a copy of the Complaint through Carol Ann Rich. It does not appear that Best Taxi was served with a copy of the Complaint.

³ Federal Rule of Civil Procedure 65 applies in the Superior Court pursuant to Superior Court Rule 7. *Yusuf v. Hamed*, 59 V.I. 841, n.2 (V.I. 2013). The Supreme Court of the Virgin Islands (hereinafter, “Supreme Court”) have consistently recognized the availability of injunctive relief in the Virgin Islands. See, e.g., *Yusuf*, 59 V.I. 841; *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544 (V.I. 2015); *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548 (V.I. 2012); *Crucians in Focus, Inc. v. VI 4D, LLLP*, 57 V.I. 529 (V.I. 2012). Since there are precedents from the Supreme Court regarding motions for temporary restraining order and preliminary injunction, the Court will use the standard of review set forth in said precedents.

⁴ *3RC & Co.*, 63 V.I. at 550.

The burden is on Plaintiff to demonstrate entitlement to the issuance of a temporary restraining order (hereinafter, “TRO”) under these factors.⁵ In moving for a temporary restraining order, mere allegations are not enough, and a party is required to submit evidence beyond motions and pleadings to support the claim on the merits or the contentions of irreparable harm.⁶ The moving party has the burden of making some showing on all four factors.⁷ In evaluating the injunctive motion, the Supreme Court instructed that the Superior Court “must evaluate the moving party’s showing on all four factors under a sliding scale standard.”⁸ The Supreme Court further instructed that, “[i]n conducting this sliding-scale analysis, the Superior Court must make findings on each of the four factors and determine whether—when the factors are considered together and weighed against one another—the moving party has made a clear showing that [it] is entitled to [injunctive] relief.”⁹

DISCUSSION

VITA asserts that “it is the only bid applicant that is qualified to receive the bid for the WICO Dock Taxi Concession.” Compl. ¶22. VITA argues that “Best Taxi does not have 300 drivers, has never operated a taxi concession, lacks the required insurance and fails to meet other requirements for its bid to be accepted.” Compl. ¶21, Motion at 1-2,7. “Best Taxi has admitted to WICO that it does not have the required number of drivers to meet the requirements for bid acceptance.” Motion at 7. VITA also argues that Best Taxi should not have been awarded the bid, because it does not have the type of vehicles necessary to service disabled passengers as required under federal and local law. Motion at 10. On the other hand, “VITA has fulfilled all

⁵ *Gov’t of V.I. v. V.I. Paving, Inc.*, 19 V.I. 177 (D.V.I. 1982) (noting that the moving party must make a “clear showing” that it is entitled to injunctive relief).

⁶ *Bradley v. Pittsburgh Bd. Of Educ.*, 910 F.2d 1172, 1175-76 (3d Cir. 1990).

⁷ *3RC & Co.*, 63 V.I. at 557.

⁸ *Id.*

⁹ *Id.* (internal quotation marks and citations omitted) (The movant must “demonstrate primarily that irreparable harm is likely without the injunction.” However, “irreparable injury [alone] is not enough to support equitable relief, [t]here must be a plausible claim on the merits. Nevertheless, if the movant “makes out a very strong showing on the merits” then “injunctive relief may still be appropriate even where the moving party’s showing of certain and imminent harm... is much weaker, so long as the nonmoving party’s likelihood of irreparable harm is similarly very low.” Finally, if the public interest factor will typically favor the moving party if he/she demonstrates both a likelihood of success on the merits and irreparable injury.).

requirements for bid acceptance.” Moreover, “VITA has successfully provided taxi services for over 60 years and has held the franchise at the WICO dock for over 40 years.” Motion at 9.

The issue before the Court is whether to grant VITA’s request for a temporary restraining order. When ruling on a motion for a temporary restraining order, the Court must balance the four factors mentioned above and determine whether the provisions of Federal Rule of Civil Procedure 65 have been satisfied.

A. Temporary Restraining Order

Having considered VITA’s pleadings and evidence submitted in support of its request for a Temporary Restraining Order, the Court finds that VITA has met its burden.

1. VITA’s Reasonable Probability of Success on the Merits

VITA asserts that it will have a reasonable probability of success on the merits because Best Taxi has failed to meet the critical criteria for receiving the bid. Motion at 1. VITA argues that not only has Best Taxi failed to meet the necessary requirements under the bid, Best Taxi does not have the resources to service all passengers pursuant to federal and local law. Motion at 10.

When seeking injunctive relief, Plaintiffs, the moving party, must make at least some showing that they are likely to succeed on the merits.¹⁰ In order to show a reasonable probability of success on the merits, the moving party need not show that “he will actually prevail on the merits at trial, or that his success is more likely than not, the moving party only needs to show that he has “a reasonable chance, or probability, of winning.”¹¹

In order to receive the bid, Best Taxi must be qualified and prepared to provide service to any passenger and the volume of cruise ship passengers needing taxi service at the WICO dock. The Court finds that if VITA’s allegations are true, Best Taxi will not be able to meet the requirements under the bid or legally operate a taxi franchise. Accordingly, this factor weighs in favor of the issuance of a TRO.

¹⁰ *3RC & Co.*, 2015 V.I. Supreme LEXIS 22 at *12-13.

¹¹ *Yusuf*, 59 V.I. at 849.

2. Likelihood of Irreparable Harm to VITA

VITA argues that the likelihood of irreparable harm is great. VITA has other taxi operations at another dock in St. Thomas. Motion at 9. If there is a collapse of the cruise ship passenger experience because of Best Taxi's inability to meet their transportation needs, VITA's operations will be severely affected. Id. Over 300 VITA taxi drivers derive a major portion of their income from servicing the dock. Id.

Irreparable harm is "certain and imminent harm for which a monetary award does not adequately compensate."¹² Loss of control of reputation and loss of good will are established grounds for irreparable injury. *See, e.g., Appleyard v. Juan F. Luis Hosp. & Med. Ctr.*, 2014 V.I. LEXIS 56, *8-9 (V.I. Super. Ct. July 28, 2014); *Kings Wharf Islands Enters. V. Rehlaender*, 1996 V.I. LEXIS 6, *9 (Terr. Ct. Jan. 17, 1996) (the court found that the plaintiff has sufficiently demonstrated that it will suffer irreparable harm, namely, loss of business reputation and credibility in the community, if injunctive relief is not immediately granted).

The Court finds that the likelihood of irreparable harm to VITA would be great if Best Taxi were not able to honor the terms of the contract to provide transportation to cruise ship passengers. The collapse of adequate taxi service at the cruise ship dock would have a domino effect on VITA's other operations because VITA also provides services to tourists at another dock. VITA's business reputation as a taxi provider would be harmed by the introduction of a subpar taxi service provider who is unable to meet the needs of cruise ship passengers. Thus, the Court finds that this factor weighs in favor of the issuance of a TRO.

3. Likelihood of Irreparable Harm to WICO

VITA argues that "WICO would not suffer any harm" because the status quo would be preserved until the matter is resolved. Motion, at 9. The Court agrees with that WICO would not suffer any harm if it were enjoined from awarding Best Taxi the 2016-0001 concession agreement for taxi services at WICO Cruise Ship Dock. The status quo would be preserved; and VITA would continue to provide services at the dock until the

¹² *Id.* at 854 (internal quotations and citations omitted).

matter was resolved. WICO would continue to receive income and generate revenue for the Virgin Islands government.¹³ On balance, this factor weighs in favor of the issuance of a TRO.

4. Public Interest

VITA argues that the public interest favors issuing an injunction. Motion, at 9. VITA asserts that “cruise ship revenues are critical to the Virgin Islands economy.” *Id.* Best Taxi’s lack of the resources necessary to provide adequate taxi service could cause a collapse of the tourist experience. *Id.*

In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.¹⁴ In considering the public interest, courts should seek to prevent the parties from halting “specific acts presumptively benefiting the public ... until the merits [can] be reached and a determination made as to what justice require[s].”¹⁵

In the Virgin Islands, the economy relies heavily on tourism. The public has a great interest in ensuring that cruise ship passengers continue to have a great experience upon disembarking. Part of the tourist experience is adequate taxi service for all passengers. WICO is a government owned entity that generates revenue for the Virgin Islands government. Allowing a service provider who may be unprepared to service the cruise ship passengers at the dock could negatively impact the Virgin Islands economy. That is a risk that is against the public interest and that this Court is not willing to take. Cruise ships are a major slice of the bread and butter of the Virgin Islands economy. As such, it is within the public’s best interest that this Court ensures that Best Taxi can fulfill the requirements under the 2016-0001 concession agreement for taxi services at WICO Cruise Ship Dock. Accordingly, the public interest will be better served by enjoining WICO from awarding Best Taxi the 2016-0001 concession agreement until the matter is resolved. Accordingly, this factor weighs heavily in favor of granting the TRO. On balance, all four factors weigh in favor of issuing the TRO.

¹³ WICO is a public corporation and governmental instrumentality of the Government of the Virgin Islands of the United States and shall be deemed to be a public entity operating on behalf of the Government. *See* 1993 V.I. ALS 5826, 1993 V.I. SESS. LAWS 5826, V.I. Act 5826, 1993 V.I. Bill 65.

¹⁴ *See Yusuf*, 59 V.I. at 857-858.

¹⁵ *Id.*

NOTICE TO DEFENDANTS

Under Federal Rule of Civil Procedure 65(b)(1)(B), a TRO may be issued *ex parte* only if the moving party's attorney "certifies in writing any efforts made to give notice and the reasons why it should not be required." VITA indicated that Defendant WICO was served with a copy of the Motion on September 23, 2016 by e-mail/U.S. mail through Adriane J. Dudley, Esq., Attorney for WICO. Motion at 11. However, it is unclear whether Defendants Best Taxi, Terri Griffiths and Kerry Harrigan were served.

An *ex parte* TRO may be appropriate where notice is impossible because the identity of the adverse party is unknown or a known party cannot be located.¹⁶ This is certainly not the case here. In fact, Plaintiff successfully served its Complaint on two of the Defendants via hand-delivery. Thus, the Court concludes that VITA has the ability to locate and serve Defendants Best Taxi, Terri Griffiths and Kerry Harrigan. In the event that they cannot be served, then Plaintiff's attorney must certify in writing of the efforts made.¹⁷ Alternatively, Plaintiff's attorney may also certify in writing why service should not be required here.¹⁸ To date, VITA's attorney has not filed any certifications in compliance with Federal Rule of Civil Procedure 65(b)(1)(B).

"Temporary restraining orders fall within an exception to the general rule requiring notice and an opportunity to be heard, the court may issue a temporary order without an adversary hearing or written or oral notice to the adverse party or its attorney only if specific facts clearly show immediate and irreparable injury."¹⁹ "The court can grant a TRO even though Plaintiff's right to permanent relief still is uncertain."²⁰ "Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record."²¹

¹⁶ See, e.g., *Turnbull v. Parker*, ST-11-CV-429, 2011 V.I. LEXIS 41, *5 (Super. Ct. July 20, 2011) (unpublished).

¹⁷ Fed. R. Civ. P. 65(b)(1)(B).

¹⁸ *Id.*

¹⁹ *Pate v. Gov't of the V.I.*, 2014 V.I. LEXIS 112, *1 (V.I. Super. Ct. Dec. 11, 2014).

²⁰ *Id.*

²¹ Fed. R. Civ. P. 65(b)(2).

This Memorandum Opinion and corresponding Order is issued without notice to Defendants Best Taxi, Terri Griffiths and Kerry Harrigan because the facts clearly show irreparable and immediate injury. The Court finds that the Virgin Islands economy could suffer irreparable and immediate injury if Best Taxi could not fulfill the critical requirements of the concession agreement. Best Taxi is scheduled to commence servicing cruise ship passengers on October 1, 2016. In light of the high probability of immediate and irreparable harm if Best Taxi's services are allowed to commence as scheduled, the TRO must be issued without notice. Issuing the TRO immediately is necessary in order to maintain the status quo until the matter can be resolved. In order to satisfy the requirements of Federal Rule of Civil Procedure 65(b)(2), the Court will include the date and hour at the end of this Memorandum Opinion and corresponding Order, and direct the Clerk's office to promptly file this Memorandum Opinion and corresponding Order and enter it in the record.


CONCLUSION

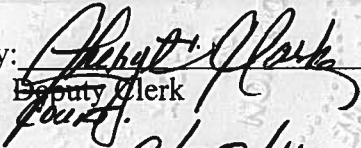
Based on the foregoing analysis, the Court will grant VITA's Motion. The Court finds that VITA has met its burden and made a clear showing on all four factors that it is entitled to the extraordinary remedy of the issuance of a TRO. WICO shall be enjoined from allowing Best Taxi to provide taxi services at WICO Cruise Ship Dock under the 2016-0001 concession agreement until matter is resolved. A hearing will be set on the matter to determine whether a preliminary injunction should be granted. The Court will issue an Order consistent with this Memorandum Opinion.

DONE and so ORDERED this 28th day of September, 2016, at 2:49 a.m./p.m.

ATTEST:

Estrella George
Acting Clerk of the Court


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

By: 
Deputy Clerk
Dated: 9/28/16