

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

VIRGIN ISLANDS TAXI ASSOCIATION,

PLAINTIFF,

v.

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

DEFENDANTS.

St.-16-CV-551

**ACTION FOR DAMAGES,
DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING
ORDER, PRELIMINARY AND
PERMANENT INJUNCTION**

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant The West Indian Company, Limited's (hereinafter, "WICO") preliminary response to Plaintiff Virgin Islands Taxi Association's (hereinafter, "Plaintiff") motion for a temporary restraining order and injunctive relief, filed on September 28, 2016 (hereinafter, "Response").¹

BACKGROUND²

On September 21, 2016, Plaintiff filed a complaint against Defendant WICO, Defendant Blue Executive Services and Transportation, LLC d/b/a Best Taxi (hereinafter, "Best Taxi"), Defendant Kerry Harrigan, and Defendant Terri Griffiths. On September 23, 2016, Plaintiff filed an emergency motion for temporary restraining order and preliminary injunction against Defendant WICO (hereinafter, "Emergency Motion"). In its Emergency Motion, Plaintiff requested the Court to enjoin Defendant WICO from awarding Defendant Best Taxi the 2016-0001 concession agreement for taxi services at the WICO Cruise Ship Dock (hereinafter, "2016-0001 Concession Agreement").

¹ Although titled as a "Response," Defendant WICO essentially moves the Court to dissolve the temporary restraining order. Thus, the Court will treat Defendant WICO's Response as a motion to dissolve the temporary restraining order. *See e.g., Harris v. Garcia*, 2010 V.I. Supreme LEXIS 3, *7-8 ("it is well established that the function of the motion, not the caption, dictates which rule applies") (internal quotations omitted).

² This memorandum opinion recites the factual background only to the extent necessary to explain the present issues and the bases of the Court's decision.

On September 28, 2016, the Court issued a memorandum opinion holding that “[Plaintiff] has met its burden and made a clear showing on all four factors”³ and thus “entitled to the extraordinary remedy of the issuance of a [temporary restraining order].” (Sept. 28, 2016 Memo. Op., p. 9) In the accompanying order, the Court, *inter alia*, granted Plaintiff’s Emergency Motion and enjoined Defendant WICO from allowing Defendant Best Taxi to commence service at the WICO Cruise Ship Dock on October 1, 2016. (Sept. 28, 2016 Order) A hearing on the issuance of a preliminary injunction was scheduled for October 4, 2016. (Id.) On September 28, 2016, after receipt of the Court’s September 28, 2106 memorandum opinion and order, Defendant WICO filed this instant Response.

DISCUSSION

First, Defendant WICO challenged the Court’s finding that all four factors weighed in favor of the issuance of a temporary restraining order.⁴ More specifically, Defendant WICO argued against the Court’s determination that “no harm would result to Defendants from issuance of the [temporary restraining order].” (Motion, p. 1) However, Defendant WICO is mistaken. In addressing the likelihood of irreparable harm factor in the September 28, 2016 memorandum opinion, the Court found that “[Defendant] WICO would not suffer any harm if it were enjoined from awarding [Defendant] Best Taxi the 2016-0001 concession agreement for taxi services at the WICO Cruise Ship Dock.” (Sept. 28, 2016 Memo. Op., p. 6) (emphasis added). The Court never made a determination of the

³ Precedents from the Supreme Court of the Virgin Islands establish that the Superior Court shall consider four factors in deciding a motion for 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. *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 550 (V.I. 2015); *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (V.I. 2012). The factors to be considered when evaluating a temporary restraining order request are the same factors courts consider when evaluating whether to issue a preliminary injunction. *Appleyard v. Juan F. Luis Hosp. & Med. Ctr.*, SX-14-CV-282, 2014 V.I. LEXIS 56, *4 (Super. Ct. July 28, 2014) (unpublished); *Pate v. Govt. of the V.I.*, ST-14-CV-479, 2014 V.I. LEXIS 112, *7 (Super. Ct. Dec. 11, 2014) (unpublished).

⁴ Defendant WICO indicated that it “will file an Opposition before October 4, 2016 addressing each of the four factors that demonstrate why [Plaintiff] is not entitled to injunctive relief.” (Motion, p. 3) As a result, Defendant WICO did not address any of the four factors in this instant Response, except briefly mentioning the likelihood of irreparable harm to all Defendants. Thus, this memorandum opinion will focus on Defendant WICO’s argument that the temporary restraining order must be dissolved due to Plaintiff’s failure to post adequate bond.

likelihood of irreparable harm to all Defendant, as Defendant WICO claimed in its Response, since the Emergency Motion was filed to only enjoin Defendant WICO and no other Defendants.

Second, Defendant WICO argued that, even assuming *arguendo* that all four factors weighed in favor of the issuance of a temporary restraining order, Plaintiff—the movant—must still post an adequate bond as required. (Motion, p. 2) “[Defendant] WICO respectfully submits that [Plaintiff’s Emergency Motion] are facially deficient, because Plaintiff has failed to address the mandatory requirement of an injunction bond, or to offer evidence of the financial ability to post a bond in an amount that is sufficient to protect the Defendants.” (Id.) Thus, Defendant WICO concluded, that the Court should dissolve the temporary restraining order “unless Plaintiff can provide proof of its financial ability to post an adequate bond, in an amount of not less than \$500,000.00.” (Id., at p. 5)

A. Injunction Bond

Federal Rule of Civil Procedure 65(c)⁵ provides that a court may issue an injunctive relief “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” In *Yusuf*, the Supreme Court of the Virgin Islands (hereinafter, “Supreme Court”) explained that “[t]he purpose of this security is to guarantee that the enjoined party will be compensated for the expenses of complying with an erroneously issued injunction, as well as placing the moving party on notice of the maximum amount of compensation it could be forced to pay.” 59 V.I. at 860. The Supreme Court instructed that “courts should err on the high side in setting the amount of security” because “it is generally settled that, with rare exceptions, a defendant wrongfully enjoined has recourse only against the bond.” *Id.* (internal citations omitted).

⁵ 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 have consistently recognized the availability of injunctive relief in the Virgin Islands. *See, e.g., Yusuf v. Hamed*, 59 V.I. 841 (V.I. 2013); *3RC & Co.*, 63 V.I. 544; *Petrus*, 56 V.I. 548; *Crucians in Focus, Inc. v. VI 4D, LLLP*, 57 V.I. 529 (V.I. 2012).

In this instance, although Defendant WICO claimed that the economic cost to Defendant WICO is estimated to be “not less [than] \$260,000.00 over 6 months,” Defendant WICO argued that Plaintiff should “post a bond of not less than \$500,000.00, and perhaps significantly more, to adequately protect all of the Defendants from potential harm.” (Motion, p. 5) Defendant WICO arrived at the amount of \$260,000.00 for six months based on the following factors: “(a) A loss of \$18,000 in concession fees ([Plaintiff] pays \$2,000.00 per month; the [2016-0001 Concession Agreement] with [Defendant] Best Taxi provides for \$5,000 per month); (b) A conservative estimate of loss of at least 2% in passenger revenues, for a total of \$121,000; and (c) A conservative estimate of \$20,000 per month in increased administrative and security personnel costs to [Defendant] WICO for delays in implementing planned improvements in staging and management of drivers and tour operators, which are part of the [2016-0001 Concession Agreement], for a total of \$120,000. Petersen Aff. At ¶ 7.” (Motion, p. 5) Defendant WICO did not provide any explanation as to the additional \$240,000.00.

The Court must point out at the outset that Plaintiff’s Emergency Motion only sought to enjoin Defendant WICO and no other Defendants. Thus, when the Court granted Plaintiff’s Emergency Motion, the temporary restraining order was issued only to enjoin Defendant WICO and no other Defendants. Here, Defendant WICO wants the bond amount set to cover the potential harm sustained by all Defendants. However, Defendant WICO failed to cite to any authority to support its assertion that a non-enjoined party also has recourse against the bond.⁶ Accordingly, in setting the amount of the bond in this matter, the Court will only consider the potential cost and damages sustained by Defendant WICO for being wrongfully enjoined. *See Yusuf*, 59 V.I. at 860 (“[t]he

⁶ In *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, n. 13 (V.I. 2016), the Supreme Court clearly stated that “Members of the Virgin Islands Bar... must be cognizant of their responsibility to serve as advocates for their clients, which includes making all necessary legal arguments...” Moreover, albeit it is in the context of an appeal, the Supreme Court has long established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule. *See Bernhardt v. Bernhardt*, 51 V.I. 341, 345-46 (V.I. 2009); *see also, Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 238-239 (V.I. 2013) (The rules of this Court require an appellant’s brief to “contain the contentions of the appellant with respect to each of the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.”) (emphasis in original).

purpose of this security is to guarantee that the *enjoined party* will be compensated for the expenses of complying with an erroneously issued injunction.”) (emphasis added). The Court will now address each of the aforementioned factors in turn.

a. Concession Fees

According to Defendant WICO’s Response, Plaintiff currently pays Defendant WICO \$2,000.00 per month in concession fees. (Motion, p. 5) (Motion, p. 5) However, if Defendant WICO awards Defendant Best Taxi the 2016-0001 Concession Agreement, then Defendant Best Taxi is required to pay Defendant WICO \$5,000.00 per month in concession fees. (Id.; the 2016-0001 Concession Agreement, p.4⁷) Thus, the Court concludes that if the injunction was erroneously issued, then Defendant WICO would sustain a loss of \$3,000.00 per month in concession fees, in the total amount of \$18,000.00 for six months.⁸

b. Passenger Revenues

According to its Response, Defendant WICO would sustain a loss of at least 2% in passenger revenues, for a total of \$121,000.00 for six months. (Motion, p. 5) The Court has several concerns with regard to this calculation. First, Defendant WICO never provided the total amount of its passenger revenues. Based on Defendant WICO’s calculation, it appears that Defendant WICO’s passenger revenues for six months is equal to \$6,050,000.00.⁹ Second, if that amount—\$6,050,000.00—is indeed Defendant WICO’s passenger revenues for six months, Defendant WICO never provided any evidence to support this amount. Third, Defendant WICO never explained why

⁷ A copy of the 2016-0001 Concession Agreement is in the file—Plaintiff had previously attached a copy as an exhibit to its complaint and its Emergency Motion.

⁸ The Court finds six months to be a reasonable time frame to resolve this matter. Thus, at this time, the Court will use this time frame to calculate the bond amount. In the event that it becomes apparent that the time frame will be shortened or lengthened, either party can move the Court to amend the bond amount so that it properly serves its purpose—namely, “to guarantee that the enjoined party will be compensated for the expenses of complying with an erroneously issued injunction, as well as placing the moving party on notice of the maximum amount of compensation it could be forced to pay.” *Yusuf*, 59 V.I. at 860.

⁹ 2% of \$6,050,000.00 is equal to \$121,000.00.

it would sustain a loss of at least 2% in passenger revenues if Defendant WICO was wrongfully enjoined. Based on the limited information before the Court, the Court cannot discern the reason for such a loss in passenger revenues when the status quo is preserved. *See In re Najawicz*, 52 V.I. 311 at *11 (V.I. 2009) (the purpose of issuing a temporary restraining order is to preserve the status quo); *see also, Pate*, 2014 V.I. LEXIS 112 at *5; *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 188 (Super. Ct. 2015). Plaintiff will continue to provide taxi services at the WICO Cruise Ship Dock. The fact that Plaintiff has had the franchise to transport cruise ship passengers at the WICO Cruise Ship Dock for over forty years¹⁰ shows that, at a minimum, Plaintiff's services is sufficient. Had Defendant WICO sustained a 2% loss in passenger revenues for every month Plaintiff's service was used in the past forty years, it is hard to imagine that Defendant WICO is only now raising its complaint against Plaintiff's service. Thus, the Court concludes that, even if the injunction was erroneously issued, Defendant WICO would not sustain a loss in passenger revenues.

c. Administrative and Security Personnel Costs

According to its Response, Defendant WICO would sustain a loss in the amount of \$20,000.00 per month, for a total of \$120,000.00 for six months, for increased administrative and security personnel costs due to delays in implementing planned improvements in staging and management of drivers and tour operators as part of the 2016-0001 Concession Agreement. (Motion, p. 5) Again, the Court has several concerns with regard to this calculation. First, Defendant WICO never explained why the delays in implementing "planned improvements in staging and management of drivers and tour operators" as provided in the 2016-0001 Concession Agreement would increase its administrative and security personnel costs. Defendant WICO simply stated that, "[e]very day that the [2016-0001 Concession Agreement] is delayed is a day that WICO is left in limbo with

¹⁰ September 28, 2016 Memo. Op., p. 1.

implementation of customer service initiatives.” Based on the limited information before the Court, the Court cannot discern the reason for such increase in Defendant WICO administrative and security personnel costs when the status quo is preserved. *See In re Najawicz*, 52 V.I. 311 at *11 (the purpose of issuing a temporary restraining order is to preserve the status quo); *see also, Pate*, 2014 V.I. LEXIS 112 at *5; *SBRMCOA, LLC*, 62 V.I. at 188. Second, if that amount—\$120,000.00—is indeed Defendant WICO’s loss for increased administrative and security personnel costs for six months for failure to implement planned improvements under the 2016-0001 Concession Agreement, Defendant WICO never provided any evidence to support how it arrived at this amount. Thus, the Court concludes that, even if the injunction was erroneously issued, Defendant WICO would not sustain a loss in increased administrative and security personnel costs.

CONCLUSION

Based on the foregoing, the Court finds \$18,000.00 to be the proper amount Plaintiff should provide in security to pay costs and damages sustained by Defendant WICO if it is hereafter found to have been wrongfully enjoined. At this juncture, the Court will direct Plaintiff to post bond in the amount of \$18,000.00 and deny Defendant WICO’s request to dissolve the temporary restraining order issued on September 28, 2016. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 30 day of September, 2016.

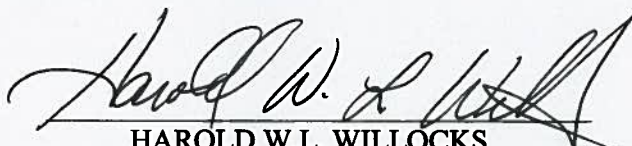
ATTEST:

Estrella H. George
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 9/30/16


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