

**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.

SX-16-CV-551

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

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Blue Executive Services and Transportation, LLC d/b/a Best Taxi's (hereinafter, "Best Taxi") motion to increase bond for injunctive relief, filed on October 7, 2016 (hereinafter, "Motion"). On October 11, 2016, Plaintiff Virgin Islands Taxi Association (hereinafter, "VITA") filed an opposition (hereinafter, "Opposition").¹

BACKGROUND²

On September 21, 2016, Plaintiff VITA filed a complaint against Defendant The West Indian Company, Limited (hereinafter, "WICO"), Defendant 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

¹ The Court is not prohibited from ruling on a motion without a response in opposition or reply when deemed appropriate. LRCi 7.1(e)(3); *see also, Hodge v. V.I. Water & Power Auth.*, 55 V.I. 460, 463 (Super. Ct. Dec. 22, 2011); *In re Refinery Dust Claims*, SX-06-CV-78, 2016 V.I. LEXIS 48, *12 (Super. Ct. May 3, 2016) (unpublished).

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.

awarding Defendant Best Taxi the 2016-0001 concession agreement for taxi services at the WICO Cruise Ship Dock.

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].” *Virgin Islands Taxi Ass’n v. The W. Indian Co.*, ST-16-CV-551, 2016 V.I. LEXIS 150, *16 (Super. Ct. Sep. 28, 2016) (unpublished). 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 30, 2016, per the Court’s order, Plaintiff VITA posted bond in the amount of \$18,000.00.⁴

Defendant Best Taxi filed this instant Motion requesting the Court to increase the bond amount.

STANDARD OF REVIEW

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

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 The Court concluded in its September 30, 2016 memorandum opinion that, if the injunction was erroneously issued, 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. *Virgin Islands Taxi Ass’n v. The W. Indian Co.*, ST-16-CV-551, 2016 V.I. LEXIS 153, *9 (Super. Ct. Sep. 30, 2016) (unpublished). The Court noted that, at this time, six months is a reasonable time frame to resolve this matter, and thus, the Court used this time frame to calculate the bond amount. *Id.*, at fn. 8.

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*, 59 V.I. 841; *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).

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).

DISCUSSION

In its Motion, Defendant Best Taxi argued that Plaintiff VITA should post additional bond "to provide adequate protection to [Defendant Best Taxi] for the costs, damages and losses which will result from having been wrongfully restrained and prohibited from the said operations." (Motion, p. 1) More specifically, Defendant Best Taxi argued that Plaintiff VITA should post bond in an additional amount of \$165,000.00 based on its calculation.⁶ (*Id.*, at p. 7)

In its Opposition, Plaintiff VITA argued that "[Defendant Best Taxi] has never been enjoined or restrained, only Defendant WICO was restrained and enjoined." (*Opp.*, p. 2) Furthermore, Plaintiff VITA disputed Defendant Best Taxi's calculation of its potential costs, damages and losses. (*Id.*, at p. 1-4)

The Court must point out at the outset that Plaintiff's Emergency Motion only sought to enjoin Defendant WICO. Thus, the temporary restraining order issued only enjoined Defendant WICO and no other Defendants. Here, Defendant Best Taxi argued that it is entitled to security to cover the potential harm it sustains in the event that the injunction was erroneously issued. However, Defendant Best Taxi failed to cite to any authority to support its assertion that a non-enjoined party also has

⁶ Defendant Best Taxi's calculation is based on the following factors for six months: (1) the driver's monthly dues; (2) the driver's daily fees, which include driver fees for taxis and for tours; (3) the ship schedule; (4) overhead expenses, including the \$5,000.00 monthly concession fee; and (5) reasonable attorney's fees incurred in this instant litigation. (*Id.*, at p. 5-7)

recourse against the bond.⁷ Accordingly, in setting the amount of the bond in this matter, the Court will not consider the potential costs, damages and losses sustained by Defendant Best Taxi, a non-enjoined party. *See Yusuf*, 59 V.I. at 860 (“[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.”) (emphasis added).

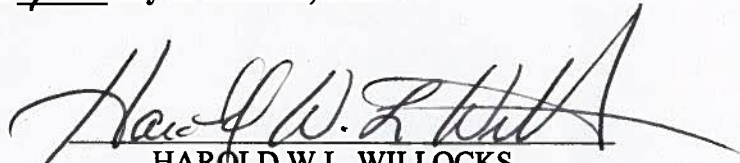
CONCLUSION

Based on the foregoing, the Court will deny Defendant Best Taxi’s motion to increase bond for injunctive relief. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 14th day of October, 2016.

ATTEST:

Estrella H. George
Acting Clerk of the Court



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

By: 

Court Clerk Supervisor

Dated: 10/19/16

⁷ 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).