

NOT FOR PUBLICATION

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

**OLIVINE ANNE TREASURE and LESLIE HODGE,
On behalf of their minor children,
JARED HODGE AND SIMONE ALANA HODGE,**

Plaintiffs,

v.

**GOOD HOPE COUNTRY DAY SCHOOL AND
KARI LOYA, HEAD OF SCHOOL,
Defendants.**

SX-16-CV-533

**ACTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

MEMORANDUM OPINION

THIS MATTER comes before the Court on Plaintiffs Olivine Anne Treasure and Leslie Hodge, on behalf of their minor children, Jared Hodge and Simone Alana Hodge's (hereinafter, "Plaintiffs") Emergency Motion for Temporary Restraining Order (hereinafter, "Motion") pursuant to Federal Rule of Civil Procedure 65. The Motion was filed on August 25, 2016. For the following reasons, the Court will grant Plaintiffs' Motion and will deny Plaintiffs' request to waive the security bond.

FACTS AND PROCEDURAL HISTORY

Plaintiffs Jared Hodge (hereinafter, "Jared") and Simone Alana Hodge (hereinafter, "Simone") (collectively, "children") have been students at Good Hope Country Day School (hereinafter, "GHCDs") for seven (7) years. Motion at 1, Verified Compl. ¶6. Simone was a seventh grade honor roll student during the 2015-2016 school year. Motion at 1, Verified Compl. ¶7. Jared was a ninth grader during the 2015-2016 school year and the school's current Spelling Bee Champion, the past Geography Bee Champion, the past Math Counts Scholar, and scored in the ninety seventh (97th) percentile on his Nationally Normed Standardized Test (IOWA Test). Motion at 1, Verified Compl. ¶8.

During the first semester of the 2015-2016 school year, without Plaintiffs' knowledge, Jared began to fail some of his classes. Motion at 1, Verified Compl. ¶9. GHCDs failed to notify Plaintiffs or

send Jared to probation study hall as required by GHCDs's handbook and rules and regulations. Id. (Ex. 1, at 6-7). According to GHCDs Upper School Hand Book, "[p]arents may check student performance, which will be updated biweekly, in PlusPortals (hereinafter, "Portal")." Motion at 2, Verified Compl. ¶10 (Ex. 1, at 6). However, Plaintiffs were unable to view Jared's grades because the required passwords were not provided at registration and Plaintiffs were never taught how to navigate the Portal. Motion at 2, Verified Compl. ¶11. None of Jared's teachers notified Plaintiffs that there was a change in performance, that Jared was in danger of earning failing grades, and that Jared was working below ability. Motion at 2, Verified Compl. ¶12.

Plaintiffs learned about Jared's poor performance two (2) months after GHCDs should have notified Plaintiffs. Motion at 2, Verified Compl. ¶13. Once Plaintiffs were involved, Jared's grades drastically improved. Id. In February 2016, Plaintiffs, through their attorney, requested that the school grades be corrected to reflect Jared's true potential. Motion at 2, Verified Compl. ¶14 (Ex. 2). Defendant Kari Loya (hereinafter, "Loya") refused; and after months of attempting to settle the matter through their attorneys, the parties were at an impasse. Motion at 2, Verified Compl. ¶15.

In April 2016, Plaintiffs requested to proceed to arbitration through the American Arbitration Association (hereinafter, "AAA"). Motion at 2, Verified Compl. ¶16 (Ex. 3). On June 1, 2016, AAA sent a letter acknowledging receipt of Plaintiffs' request to arbitrate. Motion at 2, Verified Compl. ¶17 (Ex. 4). In late May 2016, prior to scheduling arbitration, Plaintiffs requested that Defendants relinquish their right to deny admission to Plaintiffs' children for anything other than serious violations. Motion at 3, Verified Compl. ¶18.

In March 2016, Defendants offered Plaintiffs contracts to enroll their children for the 2016-2017 school year. Motion at 3, Verified Compl. ¶19. Plaintiffs registered their children and paid \$15,300 towards tuition for Simone in April 2016 and \$1,500 towards Jared's tuition in June 2016. Id. (Ex. 5-8). Plaintiffs had already begun preparing for the start of the school year, including doing extensive summer

readings and purchasing new clothes. Motion at 3, Verified Compl. ¶22. On February 4, 2016, Plaintiffs e-mailed a request the children's school records. Motion at 3, Verified Compl. ¶23. However, Defendants responded to the e-mail, but refused to release the children's school records. Motion at 3, Verified Compl. ¶30. On or about August 23, 2016, Plaintiffs received a letter from Loya stating that the GHCDs has decided not to re-enroll both children for the 2016-2017 school year and returned both checks almost three (3) months after the children were registered. Motion at 4, Verified Compl. ¶27.

Plaintiff's second choice of school is already in session, they are already encumbered by the payments made to GHCDs, spent money on new school clothes, and completed the summer reading. Motion at 4, Verified Compl. ¶33. Changing schools would impose a hardship on the Plaintiffs. *Id.*

On August 25, 2016, Plaintiffs filed a Verified Complaint against Defendants, along with the instant Motion. In their Motion, Plaintiffs requested a temporary restraining order to prevent the Defendants from revoking the enrollment of Jared Hodge and Simone Alana Hodge (hereinafter, "children") at the Good Hope Country Day School (hereinafter, "GHCDs"). Furthermore, Plaintiffs have certified that injunctive relief without notice to the Defendants is justified in order for the children to be able to attend school. Aff. ¶34.

STANDARD OF REVIEW¹

Federal Rule of Civil Procedure 65 (hereinafter, "Rule 65") governs temporary restraining orders (hereinafter, "TRO") and preliminary injunctions.² Precedents from the Supreme Court of the Virgin Islands (hereinafter, "Supreme Court") establish that the

¹ See *Redfield v. Canegata*, 2016 V.I. LEXIS 39, *6-8 (V.I. Super. Ct. Apr. 20, 2016) (succinctly explaining the standard of review governing temporary restraining orders).

² 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.

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.³

The burden is on Plaintiffs to demonstrate entitlement to the issuance of a preliminary injunction under these factors.⁴ In moving for a preliminary injunction, 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.⁵ The moving party has the burden of making some showing on all four factors.⁶ In evaluating the injunctive motion, the Supreme Court instructed the Superior Court “must evaluate the moving party’s showing on all four factors under a sliding scale standard.”⁷ 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.”⁸

³ *3RC & Co.*, 63 V.I. at 550.

⁴ *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).

⁵ *Bradley v. Pittsburgh Bd. Of Educ.*, 910 F.2d 1172, 1175-76 (3d Cir. 1990).

⁶ *3RC & Co.*, 63 V.I. at 557.

⁷ *Id.*

⁸ *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.).

DISCUSSION

A. Temporary Restraining Order

Having considered Plaintiffs' pleadings and evidence submitted in support of its request for Temporary Restraining Order, the Court finds that Plaintiffs have met their burden.

1. Plaintiffs' Reasonable Probability of Success on the Merits

Plaintiffs assert that there is a reasonable probability of success on the merits on a breach of contract claim because the Defendants' did not notify Plaintiffs that they wished to terminate the contract, and Plaintiffs could not reasonably commit to sending their children to more than one school. Motion at 3. If the allegations are true that the Defendants allowed Plaintiffs to register for school, accepted payment for their registration, and then revoked enrollment, Plaintiffs would have a reasonable probability of success on the merits on a breach of contract claim. Accordingly, this factor weighs heavily in favor of the issuance of a TRO.

2. Likelihood of Irreparable Harm to Plaintiffs

Plaintiffs argue that the likelihood of irreparable harm to their children is great. The Court finds that Plaintiffs' allegations that the Defendants revoked the children's enrollment six (6) days before the first day of school constitutes irreparable harm.⁹ Motion at 4, Verified Compl. ¶27 (Ex. 10). The children would be irreparably harmed if they are not allowed to attend school until the resolution of this dispute, because the children could fall so behind in their school work that it would be impossible to catch up. Thus, the children have no other option but to enroll at the GHCDs because Defendants have refused to release the children's school

⁹ Defendant's letter dated August 23, 2016 revoked the children's enrollment. (Ex. 10) The first day of school for the 2016-2017 school year is Monday, August 29, 2016.

records which hinders their ability to enroll in another school. Motion at 3, Verified Compl.

¶30. Furthermore, Plaintiffs' second choice of school is already in session, they are already encumbered by the payments made to GHCDs, spent money on new school clothes, and completed the summer reading. Motion at 4, Verified Compl. ¶33. Hence, changing schools would impose a hardship on the Plaintiffs. *Id.* The Court finds that this factor weighs in favor of the issuance of a TRO.

3. Likelihood of Irreparable Harm to Defendants

Plaintiffs further argue that Defendants would not suffer irreparable harm. The Court finds Defendants would not experience any hardship by allowing the children to enroll. Plaintiffs would still be required to pay the appropriate tuition fees. Hence, allowing the children to enroll would not result in harm to the GHCDs. On balance, this factor weighs in favor of the issuance of a TRO.

4. Public Interest

Plaintiffs argue that it is in the best interest of the public that the children not be deprived of an education. The Court finds that the public has an interest in ensuring that children be properly educated and that the public has an interest in ensuring that contracts be enforced according to their terms. Accordingly, the public interest will be better served by allowing the children to attend the GHCDs until the matter is resolved. This factor weighs in favor of granting the TRO. All four factors weigh in favor of issuing the TRO.

B. Security Bond

Plaintiffs request a waiver of the security bond required under Rule 65(c). Federal Rule of Civil Procedure 65(c) provides in pertinent part, "[t]he court may issue a preliminary injunction or a temporary restraining order 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." *See* Fed. R. Civ. P. 65(c). Exceptions to the security bond requirement are so rare, that the

requirement is almost mandatory. *Scanvec Amiable, Ltd. v. Chang*, 80 Fed. Appx. 171, 175 (3d Cir. Pa. 2003) (internal quotation marks and citations omitted). “Strict application of the security requirement may be inappropriate ... in noncommercial cases, [where] the court should consider the possible loss to the enjoined party together with the hardship that a bond requirement would impose on the applicant.” *Payne v. Fawkes*, 2014 U.S. Dist. LEXIS 127697, *26 (D.V.I. Sept. 12, 2014) (internal quotation marks omitted)(citing *Scanvec Amiable, Ltd.*, 80 F. App'x at 175 (citations omitted)). Here, Plaintiffs have not demonstrated any financial hardships.

The Supreme Court explained that “the 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.” *See Yusuf v. Hamed*, 59 V.I. 841, 860 (VI. 2013)(citations omitted). The Supreme Court further instructed that “[b]ecause it is generally settled that, with rare exceptions, a defendant wrongfully enjoined has recourse only against the bond, courts should err on the high side in setting the amount of security.” *Id.* (internal quotation marks and citations omitted). Therefore, Plaintiff will be required to post one thousand dollars (\$1,000.00) with the Clerk of the Superior Court, an amount that the Court finds reasonable under the circumstances.

CONCLUSION

Based on the foregoing analysis, the Court will grant the TRO and deny Plaintiffs’ request to waive the security bond requirement. Plaintiffs have presented sufficient evidence to meet their burden of clearly showing that the balance of hardships tips in their favor to warrant immediate injunctive relief under Rule 65(b). Plaintiffs have not shown any hardship to justify waiver of the security bond. Plaintiff will be required to post one thousand dollars (\$1,000.00) with the Clerk of the Superior Court. The Court will issue an Order consistent with this Memorandum Opinion.

Treasure, et. al. v. Loya, et. al.

SX-16-CV-533

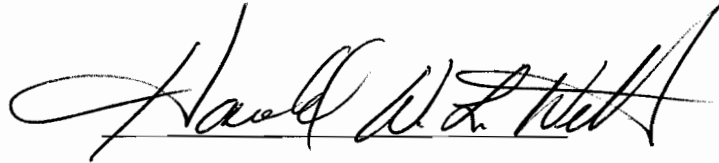
MEMORANDUM OPINION

Page 8 of 8

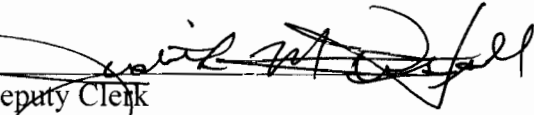
Dated: 8/26/16

ATTEST:

Estrella George
Acting Clerk of the Court



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

By: 
Deputy Clerk

Dated: 8/26/16