

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

The National Post Office Collaborate,	:	Case No. 3:13CV1406 (JBA)
Center for Art and Mindfulness, Inc.,	:	
Formerly known as the Lower	:	
Fairfield Art Center, Inc., and	:	
Kaysay H. Abrha, an Individual,	:	
<i>Plaintiffs</i>	:	
v.	:	
	:	
Patrick R. Donahoe, Postmaster	:	
General of the United States Postal	:	
Service, and The United States	:	
Postal Service	:	
<i>Defendants</i>	:	September 25, 2013
	:	

**United States of America’s Emergency Motion for
Clarification of the Terms of Temporary Restraining Order**

The defendants, the Postmaster General of the United States Postal Service and the United States Postal Service, by and through their attorney, Acting United States Attorney Deirdre M. Daly, and the undersigned Assistant United States Attorney, hereby request that the Court clarify a temporary restraining order (the “TRO”)[ECF No. 13] in order to clarify terms that are ambiguous. The defendants request that the Court consider this Motion on an emergency basis in light of the immediate harm to the United States Postal Service created by the entry of a TRO in the absence of a deadline for posting the \$4,500,000 security ordered by the court. The defendants reserve their right to seek reconsideration of the TRO on other grounds, but seek consideration of this motion more immediately in the interests of its need for clarification of the TRO terms and conditions.

The defendants request immediate clarification of the TRO because:

- 1) the TRO fails to impose a deadline by which the plaintiffs must post security required pursuant to Fed.R.Civ.P. 65(c) and thus unfairly exposes the USPS to significant, unmitigated risk;
- 2) the TRO fails to specify that it terminates automatically of its own terms within fourteen (14) days unless extended by further order of the court as required by Fed.R.Civ.P. 65(b)(2). As presently worded the TRO implies that the injunction will exist for an indefinite period of time, stating the defendants are enjoined “pending a hearing and ruling on the Plaintiff’s application for a preliminary injunction or further order of the court”¹; and,
- 3) the TRO fails to direct the plaintiffs to discharge the Notice of *Lis Pendens* filed on the Stamford, Connecticut Land Records notwithstanding the plaintiffs’ admissions that the Notice was filed erroneously as to two of the plaintiffs.

In support of this Motion, the defendants respectfully represent the following:

1. The United States Postal Service (“USPS”) owns real property known as 421 Atlantic Street, Stamford, CT, (“Property”), and was scheduled to sell the Property on September 25, 2013 to a buyer for \$4,300,000. On September 25, 2013, the plaintiffs recorded a Notice of *Lis Pendens* against the Property (the “Notice”) and commenced this case by filing a verified complaint with this Court.

¹ The TRO states that the defendant is enjoined, “pending a hearing and ruling on the Plaintiff’s application for a preliminary injunction or further order of the court.” ECF No. 13, page 5.

2. In a telephonic hearing held from approximately 5:30 p.m. to approximately 7:00 p.m. on September 25, 2013, the defendants advised the court that the USPS was a party to a purchase and sale agreement requiring it to convey marketable title to the Property to a purchaser on that day, on September 25, 2013, and that the purchase price for the Property was \$4,300,000. The United States advised the court that the timing of the sale of the Property – with a closing for September 25, 2013 – was important to the USPS. The purchase and sale agreement between the buyer and USPS provides that time is of the essence as to the closing date.

3. The court's determination that security of \$4,500,000 is required to protect the interests of the USPS will be of absolutely no effect without an immediate deadline for the posting of such security. Unless the plaintiffs are required to post a bond by a time certain on Friday, September 27, 2013, the USPS will be in a position where it is prohibited from selling the Property and there will be no security available to compensate the USPS for the loss of the ability to complete the time-is-of-the-essence transaction.

4. First, therefore, the defendants seek an order of the court setting a deadline of 2:00 p.m. on September 27, 2013 for the plaintiffs to post the security ordered by the TRO with the Clerk of the Court. Fundamental fairness requires that the court impose a deadline of a time certain on Friday, September 27, 2013 by which the plaintiffs must post security in the amount of \$4,500,000. The time to post security for a TRO cannot be open-ended because the passage of time

without the posting of the security will defeat the purpose of assessing the plaintiffs a countervailing weight to the burden of the TRO.

5. The defendants note that the plaintiffs did not offer to post a bond in any specific amount during the TRO hearing and there is nothing in the record to suggest that they are able to post the bond required by the TRO. The defendants submit that a deadline of no later than 2:00 p.m. on Friday, September 27, 2013 for plaintiffs to post a bond in the amount set by the court should be imposed. *Cf., In re: River Hills Apartment Fund*, 813 F.2d 702, 708 (5th Cir. 1987)(*time allowed to post bond was not unduly short in view of the circumstances of the case*).

6. Such a deadline – of no later than 2:00 p.m. on Friday, September 27, 2013 – is fundamentally fair since the plaintiffs commenced this case and sought the entry of the TRO on the morning of September 25, 2013. The plaintiffs, being represented by experienced counsel, knew prior to that date that Fed.R.Civ.P. 65(c) requires the court to determine and require the posting of security. Under these circumstances, the 2:00 p.m. deadline is reasonable. Preparations to line up a bond should have been underway prior to the filing of the complaint. This court has recognized the Second Circuit’s observation that under Rule 65, “generally the moving party must demonstrate confidence in his legal position by posting bond in an amount sufficient to protect his adversary from loss in the event that future proceedings prove that the injunction [or, here, the TRO] issued wrongfully.” *Country Fare LLC v. Lucerne Farms*, 2011 WL 2222315 (C.Conn. 2011)(VLB), citing *Nokia Corp. v. InterDigital, Inc.*, No. 10–1358–cv, 2011 WL

1944309, at *3 (2d Cir. May 23, 2011)(citing *Edgar v. MITE Corp.*, 457 U.S. 624, 649 (1982)).

7. If the plaintiffs are unable to meet the obligation to post security with the Clerk of the Court by 2:00 p.m. today (or such other time as the court may order) the United States requests that the court clarify that the TRO will be expire by its own terms and the USPS will no longer be enjoined.

8. Second, Fed.R.Civ.P. 65(b)(2) provides that temporary restraining orders like the TRO entered here expire at a time set by the court after entry, but that time period may not exceed fourteen (14) days. The language used here, that the that the defendant is enjoined, “pending a hearing and ruling on the Plaintiff’s application for a preliminary injunction or further order of the court,” is ambiguous and may be read to impose an injunction beyond the maximum fourteen (14) day time period prescribed in Rule 65(b)(2). See, ECF No. 13, page 5. For clarity and to eliminate further litigation regarding the term of the TRO, the defendants request that the court enter an order clarifying that the term of the TRO is a maximum of fourteen (14) days after the entry date of the original TRO order (*i.e.*, fourteen (14) days after September 26, 2013).

9. Third, the plaintiffs admitted during the TRO hearing that they filed the Notice of *Lis Pendens* on the Stamford Land Records in the names of all three plaintiffs, and further admitted that the only plaintiff asserting a claim to an interest in the title to the Property (albeit obscurely in Count Four of the Complaint) is Center for Art and Mindfulness, Inc., formerly known as the Lower Fairfield Art Center, Inc. (the “Center”). Because Connecticut General Statutes §

52-325a authorizes only parties asserting a claim to an interest in the title to real property to file such a notice, and as the plaintiffs conceded during the TRO hearing that two plaintiffs clearly possess no such claim, the TRO should direct the plaintiffs to correct their admitted error on the Stamford Land Records by immediately discharging the Notice of *Lis Pendens* as asserted by the National Postal Collaborate and Mr. Kaysay H. Abrha.

WHEREFORE, the defendants respectfully request that the court clarify the TRO as described in this Motion through the issuance of a supplemental order of this court, and further reserves its right to make additional arguments regarding the validity and extent of the relief granted by the TRO.

Respectfully submitted,

DEIRDRE M. DALY
ACTING UNITED STATES ATTORNEY

/s/ Ann M. Nevins
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Certification of Service

I hereby certify that on September 25, 2013, I electronically filed the United States of America’s Motion for Clarification of Temporary Restraining Order with the Clerk of the United States District Court for the District of Connecticut using the CM/ECF System. I also served a copy of the document on counsel for the plaintiffs, via electronic mail at the following address:

Lawrence S. Grossman, Esq.
Counsel for the plaintiffs

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/s/ Ann M. Nevins

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