

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

LEE J. ROHN,

Petitioner,

v.

MICHAEL "REPO" SPRINGER, CRUCIANS IN FOCUS,
CLAUDE GERARD, ADELBERT BRYAN, EDWIN
CALLWOOD, DWAYNE CALLWOOD, and JOHN DOES,

Respondents.

CASE NO. SX-10-CV-342

ORDER

This matter comes before the Court¹ on the *pro se ex parte* application and complaint filed on July 23, 2010, by Petitioner seeking a temporary restraining order, preliminary injunction, and permanent injunction against Respondents, as well as a writ of seizure and an order to show cause. Petitioner primarily asserts that Respondents have defamed and will continue to defame Petitioner by causing untrue statements to be published about her on a particular internet web site and through certain broadcast media.

In order to be entitled to a temporary restraining order under Rule 65 of the Federal Rules of Civil Procedure, made applicable to the Superior Court by Rule 7 of the Rules of the Superior Court, Petitioner must demonstrate the existence of irreparable harm, the absence of an adequate and speedy remedy at law, the probability of ultimate success on the merits, and that the threat of

¹ The Hon. Darryl Dean Donohue, to whom this matter has been assigned, is currently unavailable. The undersigned acts upon Petitioner's application in his stead because it has been pending without action for seven days. Any hearing upon Petitioner's application for a preliminary and permanent injunction will be scheduled and conducted by Presiding Judge Donohue.

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harm to Defendant outweighs the threat of harm to the opposing party. *Punnett v. Carter*, 621 F.2d 578 (3d Cir. 1980); *Government v. Virgin Islands Paving Co.*, 19 V.I. 177 (D.V.I. 1982).

In addition, under Rule 65(b) a temporary restraining order may be issued without written or oral notice to the adverse party only if:

- (A) specific facts in an affidavit or a verified complain clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
- (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

It has been held that failure to comply with Rule 65(b)(1) is an abuse of discretion. See, e.g., *American Can Co., v. Mansukhani*, 742 F.2d 314, 321-24 (7th Cir. 1984).

Rule 65(b)(2) requires every temporary restraining order issued without notice to contain a statement of the date and hour it was issued, a description of the injury, a statement of why the injury is irreparable, and an indication of why the order was issued without notice. Although Rule 65(b)(2) does not specifically require an applicant to make efforts to notify the respondents, the Court may treat a failure to make efforts that would have been reasonable as a ground for denying the motion for a temporary restraining order. *Id.*

Petitioner has given no notice to Respondents. Instead Petitioner asserts that she:

...believes, based on Defendants [sic] past conduct and current unauthorized and illegal activities as averred in her Complaint, that Rohn will suffer further immediate and irreparable injury, loss, or damage before the Defendants can be heard in opposition to this application, since upon information Defendants already have, and are likely will continue to destroy critical evidence concerning the fact and scope of Defendants' culpability." (emphasis added)

No affidavit is submitted in support of the application, and neither the application nor the complaint is verified. Nor has Petitioner certified in writing any efforts made to give notice to the adverse parties and why notice should not be required. In the absence of an affidavit or verified complaint clearly showing that immediate and irreparable injury, loss, or damage will result to the

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movant before the adverse party can be heard in opposition, and in the absence of a certificate in writing demonstrating why notice should not be required, Petitioner's statements on information and belief are insufficient to support the issuance of a temporary restraining order without notice to the adverse parties. The premises considered, it is hereby ORDERED as follows:

1. The Ex Parte Application for Temporary Restraining Order, Writ of Seizure, and Order to Show Cause Regarding Preliminary Injunction filed by Petitioner is DENIED.
2. Any hearing on Petitioner's Application for a Preliminary and permanent injunction shall be scheduled by Presiding Judge Donohue.
3. A copy of this Order shall be directed to Petitioner, to the Clerk of the Court, and to the Hon. Darryl Dean Donohue, Presiding Judge.

August 2, 2010
Dated: ~~July 30, 2010.~~ *4:13 p.m.*

ATTEST: Venetia H. Velazquez, Esq.
Clerk of the Court

by: *[Signature]*
Date: 8/3 2010.

[Signature]
HON. JAMES S. CARROLL III
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS