

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

2015 MAR 30 PM 1:49

CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION

DOROTHY B. CLERK
WVA

LINDA GERACE,

Plaintiff,

v.

JULIE ANDREWS,

Defendant.

Case No. 2015-L-001052

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION AND SUPPORTING MEMORANDUM
FOR A MANDATORY TEMPORARY RESTRAINING ORDER**

Plaintiff, Linda Gerace ("Gerace"), by and through her undersigned attorneys, respectfully requests that this Court, pursuant to 735 ILCS 5/11-101, grant a mandatory temporary restraining order to prevent irreparable harm to Plaintiff and the limited liability company in which she is a 50% owner. As grounds for this Motion, Plaintiff states as follows.

1. Plaintiff and Defendant are sisters who each own a 50% share in Sycamore Speedway & Associates ("SSA") and Winner's Circle & Associates ("WCA") (the two companies will sometimes be jointly referred to as the "Companies"). both located in Maple Park, Illinois. (Cplt.¹ ¶¶ 14-16.)

2. Plaintiff is the Secretary of WCA; and, Defendant, Julie Andrews ("Andrews"), is the President of WCA. (*Id.* ¶¶ 8 & 9.)

3. WCA is a bar and restaurant. A significant portion of WCA's revenue is derived from the sale of beer and liquor. (*Id.* ¶ 14.)

4. WCA's liquor license is up for renewal on April 1, 2015. (*Id.* ¶ 53.)

¹ The First Amended Verified Complaint in this case will be referred to as the "Complaint" and will be cited as "Cplt. ¶ ___."

5. In the case of a company, Kane County Ordinances require that the renewal application be signed by both a company's president and secretary -- in this case Plaintiff and Defendant. Kane County Ordinance 3-27.

6. Plaintiff has made numerous requests to Defendant to sign WCA's renewal application prior to the April 1, 2015 deadline.

7. However, Defendant has attempted to condition her signing the liquor license renewal application on Plaintiff's concession to various demands made by Defendant regarding the payment of disputed funds to Defendant. (Cplt. ¶ 56.)

8. If WCA is unable to submit a renewal application to Kane County prior to April 1, 2015, it will lose its liquor license and, likely, be forced to cease operations. (Cplt. ¶¶ 52 & 53.)

9. Defendant's attempt to condition her signature on the renewal application on concessions that benefit her at the expense of WCA not only constitutes a breach of her fiduciary duties as an officer of WCA, but threatens WCA's existence.

10. To prove entitlement to a TRO, or an injunction, the moving party must demonstrate: (a) a protectable interest, (b) irreparable harm, (c) no adequate remedy at law, and (d) a fair question as to the movant's right to relief. *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 573, 927 N.E.2d 88, 100 (5th Dist. 2010); *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 634, 834 N.E.2d 643, 649 (2d Dist. 2005).

11. Under Illinois law, an injunction will issue to remedy a breach of fiduciary duty by an officer of a company. *See, e.g., ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.*, 62 Ill. App. 3d 671, 379 N.E.2d 1228 (1st Dist. 1978).

12. Defendant, as a corporate officer and president of WCA, has a fiduciary duty to both WCA and to her co-owner/manager, Gerace, to act in their best interests, and to not use her position as a corporate officer to gain a pecuniary advantage at the expense of the company and her co-owner/manager. *Anest v. Audino*, 332 Ill. App. 3d 468, 477, 773 N.E.2d 202, 210 (2d Dist. 2002).

13. Defendant's action of threatening the existence of the WCA in order to extract a personal pecuniary gain constitutes a blatant breach of her fiduciary duty to WCA and Gerace.

14. Thus, Gerace has a clear protectable interest in preventing Defendant from breaching her fiduciary interest to WCA and to her.

15. Because WCA is a restaurant that earns a large portion of its revenue from the sale of beer and alcohol, the failure to renew its liquor license would be fatal to its existence. (Cplt. ¶¶ 14 & 52.)

16. Thus, unless this Court issues a mandatory TRO requiring Defendant to sign the renewal application, it is likely that WCA will be forced to cease operations, thereby incurring irreparable harm.

17. It would be difficult to accurately estimate the loss of future profit to be received by Gerace if WCA was forced to close.

18. Moreover, there is not merely a fair question as to Gerace's right to (and need for) injunctive relief, but, rather a compelling showing of such a right. Defendant's act of threatening the very existence of the company in which she is an officer and 50% shareholder is so self-destructive (and venal) that she, herself, loses nothing by a mandatory TRO requiring her to sign the renewal application prior to April 1, 2015. Indeed, Defendant is obviously benefited by such a TRO in that she is prevented from destroying her own investment.

19. For the reasons stated above, all elements of a mandatory TRO are satisfied.

WHEREFORE, Plaintiff, Linda Gerace, respectfully asks that the Court issue a mandatory TRO requiring Defendant, Julie Andrews, to sign WCA's liquor license renewal application prior to the April 1, 2015 deadline.

Respectfully Submitted,

LINDA GERACE

By: /s/ Daniel J. Voelker
One of Her Attorneys

Daniel J. Voelker, Esq.
VOELKER LITIGATION GROUP
311 West Superior Street, Suite 500
Chicago, Illinois 60654
T: (312) 870-5430
F: (312) 870-5431
dvoelker@voelkerlitigationgroup.com

Dated: March 28, 2015

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LINDA GERACE,

Plaintiff,

v.

JULIE ANDREWS,

Defendant.

Case No. 2015-L-001052

NOTICE OF EMERGENCY MOTION

TO: Julie Andrews
630 NW 7th Avenue
Boca Raton, FL 33486
julie4mortgage@aol.com

PLEASE TAKE NOTICE that on Wednesday, March 31, 2015 at 9:15., we shall appear before the Honorable Judge Gomolinski, or any other Judge sitting in his stead in Room 2205 of the Richard J. Daley Center at 50 W. Washington, Chicago, Illinois, and shall present PLAINTIFFS' MOTION FOR A MANDATORY TEMPORARY RESTRAINING ORDER, a copy of which is attached hereto and thereby served upon you.

Alexander N. Loftus
VOELKER LITIGATION GROUP

VOELKER LITIGATION GROUP
311 W. Superior Street, Suite 500
Chicago, Illinois 60654
T: (312) 870-5430
F: (312) 870-5431
alex@voelkerlitigationgroup.com
Firm No. 48085

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that the above-captioned Notice of Emergency Motion and Motion were served upon the above-listed person(s) via facsimile and by depositing a copy of the same in the U.S. Mail located at 311 W. Superior, Chicago, Illinois 60654, with proper postage prepaid, and via email on March 30, 2015 at or before 5:00 p.m.

Alexander N. Loftus