

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GUARANTEE COMPANY OF)	
NORTH AMERICA USA, a corporation,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:09-cv-1003-MEF
)	
W.D. WAINWRIGHT & SONS, INC.,)	
a corporation, <i>et al.</i> ,)	(WO)
)	
Defendants.)	

ORDER

This cause is before the court on the application for temporary restraining order and petition for preliminary injunction, both of which are contained in the Verified Complaint for Exoneration of Surety (Doc. # 1) filed by the plaintiff Guarantee Company of North America USA (“Plaintiff”) on October 30, 2009. The Court has carefully considered the plaintiff’s submissions and the applicable law and finds that the request for a temporary restraining order is due to be DENIED.

Federal Rule of Civil Procedure 65 sets forth the applicable restrictions on this Court’s ability to grant a temporary restraining order. For example, it is clear from the text of Rule 65(b) that a temporary restraining order may not be granted unless

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that *immediate and irreparable injury, loss, or damage will result* to the applicant before the adverse party or that a party’s attorney can be heard in opposition, and
- (2) the applicant’s attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the

reasons supporting the claim that notice should not be required.

Fed. R. Civ. P. 65(b) (emphasis added). The Court finds that Plaintiff has failed to satisfy the requirements of Federal Rule of Civil Procedure 65.

Accordingly, it is hereby

ORDERED that the request for a temporary restraining order (Doc. # 1) is DENIED.

It is further ORDERED that the petition for preliminary injunction is REFERRED to Magistrate Judge Terry F. Moorer so that he may expeditiously set a hearing on the request for preliminary injunction and provide a report and recommendation on the merits of that request. The court would require the parties to consider consenting to the reassignment of the entire case to Magistrate Judge Moorer, but because of the limits of time in relation to the request for a temporary restraining order and a preliminary injunction, hearing on the preliminary hearing is referred to Magistrate Moorer.

DONE this 30th day of October, 2009.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE