

**HORIZON RIVER
RESTAURANTS, LLC**

VERSUS

**WEST CENTRO, LLC AND
JOSHUA BRUNO**

* **NO. 2018-CA-0412**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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BELSOME, J., DISSENTS WITH REASONS.

I respectfully dissent from the majority’s opinion concerning the trial court’s ruling granting a preliminary injunction in favor of the Plaintiff, Horizon River Restaurants, LLC, and against the Defendants, West Centro, LLC and Joshua Bruno. Finding no abuse of the trial court’s discretion, I would affirm the ruling of the trial court.

This is a landlord-tenant dispute, wherein the Plaintiff filed a suit for breach of contract requesting specific performance and damages. In conjunction with the lawsuit, the Plaintiff sought a temporary restraining order,¹ preliminary and permanent injunctive relief due to the Defendants’ alleged harassing and abusive behavior. After a hearing, the trial court denied the Defendant’s no cause of action exception² and granted a preliminary injunction enjoining the Defendants from “taking any actions to interfere with the Plaintiff’s peaceful possession of its leased premises.”³

To obtain a preliminary injunction, the petitioner must establish by *prima facie* evidence that: (1) it will suffer irreparable injury, loss, or damage if the motion for preliminary injunction is not granted and (2) it is entitled to the relief

¹ The trial court granted the temporary restraining order.

² The trial court also denied the Defendants’ motion to dissolve the temporary restraining order as moot.

³ The trial court made clear that its ruling was to prevent the filing of a “wrongful” eviction lawsuit.

sought through at least a showing that it will likely prevail on the merits of the case. *Smith v. Brumfield*, 13-1171, p. 6 (La. App. 4 Cir. 1/15/14), 133 So.3d 70, 74-75 (citation omitted) and *Historic Restoration, Inc. v. RSUI Indem. Co.*, 06-1178, p. 11 (La. App. 4 Cir. 3/21/07), 955 So.2d 200, 208). Issuance of a preliminary injunction is a harsh, drastic and extraordinary remedy and should only be issued if the applicant is threatened with irreparable loss without adequate remedy at law. *MST Enterprises Co., L.L.C. v. City of New Orleans*, 15-0112, p. 4 (La.App. 4 Cir. 7/29/15), 174 So.3d 195.

In the instant case, the record supports the trial court's conclusion to grant a temporary restraining order in this case. In particular, the Plaintiff introduced evidence that established a pattern of abusive behavior that began after the Plaintiff directed its rental payments to the Sheriff's Office as a result of a garnishment proceeding against the Defendants. The Defendants unsuccessfully instituted eviction proceedings and assessed the Plaintiffs for "unpaid rent" during the garnishment period and fines not established in the lease agreement. Though they were aware of the garnishment proceedings, the Defendants continued to send the Plaintiffs frivolous notices for non-payment of rent and manufactured fines. Further, after the trial court in the instant proceedings granted a temporary restraining order against the Defendants, Mr. Bruno, through his company Metro-Wide Apartments, sent the Plaintiff another two-day notice to pay or vacate (recommencing the eviction process).⁴

Finally, Scott Davidson, president of Horizon River Restaurants, testified that if the Plaintiff were evicted, the Plaintiff would be unable to honor its contractual obligations with Pizza Hut and its other vendors, damaging its business relationships and reputation "beyond repair." Given the foregoing record, I cannot

⁴ It is well-settled that a lessor must resort to eviction proceedings before the lessor may take possession from the lessee. *Pelleteri v. Caspian Group Inc.*, 02-2141, pp. 8-9 (La. App. 4 Cir. 7/2/03), 851 So.2d 1230, 1236 (citation omitted). The first step in an eviction proceeding is for the lessor to give the lessee a notice to vacate. See La. C.C.P. art. 4701.

say the trial court abused its discretion in finding that the Plaintiff made a *prima facie* showing of irreparable harm and success on the merits.

Unlike the majority opinion, I find that *Easterling v. Estate of Miller*, 14-1354 (La. App. 4 Cir. 12/23/15), 184 So.3d 222 analogous to this case. Similar to this case, the Plaintiffs filed a petition for breach of contract pursuant to the lease, injunctive relief, and damages. *Id.*, 14-1354, pp. 3-4, 184 So.3d at 225. The Plaintiffs sought a temporary restraining order and preliminary injunction to prevent the Defendants from instituting or following through with eviction from the property; from interfering with Plaintiffs' possession; from rejecting or failing to accept rental payments and extensions of the lease; and from destroying or failing to preserve evidence. *Id.*, 14-1354, p. 4, 184 So.3d at 225.

In response, the Defendants filed a reconventional demand seeking to have the Plaintiff evicted. *Id.* After a hearing, the trial court granted the Plaintiffs' preliminary injunction, finding that the Plaintiff demonstrated irreparable harm to their business reputation and there were no grounds for an eviction. *Id.*, 14-1354, p. 5, 184 So.3d at 225. In particular, the trial court found that, if evicted, the Plaintiffs would be unable to fulfill their contractual obligations which would irreparably harm their business reputation. *Id.* Agreeing that the Plaintiffs' established irreparable harm to their business reputation, this Court affirmed the trial court's judgment. *Id.*, 14-1354, p. 13, 184 So.3d at 230.

Like *Easterling*, the Plaintiff in the instant case demonstrated that they would suffer irreparable injury to its business reputation and relationships, if evicted and there were no grounds for eviction. In attempt to distinguish *Easterling*, the majority concludes that since there is no pending eviction proceeding in the present matter, the Plaintiff cannot prove irreparable harm to its business reputation. I disagree. In particular, I do not find a second eviction lawsuit necessary to establish grounds for a preliminary injunction.

Here, the record demonstrates that the Defendants have continuously sent notices to the Plaintiff in an effort to trigger the eviction process. In fact, although the Defendants were unsuccessful on the merits of their first eviction, Mr. Bruno, has continued to send notices to the Plaintiff. Specifically, Mr. Bruno, a different business entity, sent a notice to pay or vacate, triggering a second eviction process. At the time the notice was sent, the Defendants were prohibited from interfering with the Plaintiffs' peaceful possession of the property, including wrongful eviction efforts and imposing fines. Without injunctive relief, the Plaintiff would have no remedy to prevent the Defendants from its relentless and retaliatory eviction pursuit. Therefore, a preliminary injunction is necessary to preserve the status quo pending the outcome of the Plaintiff's corresponding breach of contract, specific performance, and damages suit.⁵

Under these facts and circumstances, I cannot find that the trial court abused its discretion in finding that the Plaintiff demonstrated irreparable harm, as well as likely success on the merits. For these reasons, I respectfully dissent and would affirm the trial court's ruling granting a preliminary injunction against the Defendants.

⁵ The purpose of a preliminary injunction is to preserve the status quo between the parties pending a trial on the merits. *Dynamic Constructors, L.L.C. v. Plaquemines Parish Government*, 15-0271, p. 2, n. 1 (La. App. 4 Cir. 8/26/15), 173 So.3d 1239, 1241.