

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:14-CV-214-FL

ANTHONY NOBLES,)
)
Plaintiff,)
)
v.)
)
)
)
RODERICK BOYD, KEITH LARSEN, and)
SOUTHERN INVESTIGATIVE)
REPORTING FOUNDATION, a North)
Carolina Corporation,)
)
Defendants.)

ORDER

This matter is before the court on plaintiff's emergency motion for temporary restraining order and preliminary injunction (DE 23), on which expedited briefing is requested. Defendant responded in opposition, and the issues raised are ripe for review. For the reasons that follow, plaintiff's motion is GRANTED in part, DENIED in part, and HELD IN ABEYANCE to the extent of issues remaining.

STATEMENT OF THE CASE

Plaintiff filed complaint October 1, 2014, asserting claims for defamation, libel, and unfair and deceptive trade practices of or relating to an article published by defendants on the internet. Plaintiff complains of claims therein made about him which have impugned plaintiff's reputation and caused grievous injury. Plaintiff describes himself as a medical device inventor, developer, and entrepreneur.

The instant motion filed on November 11, 2014, is supported by numerous declarations.

Defendants' response in opposition, contesting the merits of any temporary restraining order, was received November 5, 2014. Defendants urge that the case should proceed on a standard course, given the First Amendment rights at issue and certain deficiencies in plaintiff's pleadings (which defendants say will be the stuff of a motion to dismiss, to be filed on or before December 9, 2014). In the alternative, defendants request the opportunity to fully brief the issues raised.

DISCUSSION

Rule 65 of the Federal Rules of Civil Procedure allows a court to enter preliminary injunctive relief, including restraining orders, prior to adjudication on the merits of the action. Rule 65(a) governs preliminary injunctions, and provides that the court may issue a preliminary injunction only on notice to the adverse party. [Fed. R. Civ. P. 65\(a\)\(1\)](#).

Rule 65(b) governs temporary restraining orders, and provides as follows:

(1) *Issuing Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint 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.

[Fed. R. Civ. P. 65\(b\)\(1\)](#).

In this instance, defendants have notice. A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." [Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 375-76 \(2008\)](#). To obtain a preliminary injunction, plaintiff must establish four requirements: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in plaintiff's favor; and (4) that an injunction is in the public interest. [Real Truth About Obama](#),

[Inc. v. Federal Election Comm'n, 575 F.3d 342, 346 \(4th Cir. 2009\), vacated on other grounds 130 S. Ct. 2371 \(2010\), reinstated in relevant part on remand, 607 F.3d 355 \(4th Cir. 2010\) \(per curiam\).](#)

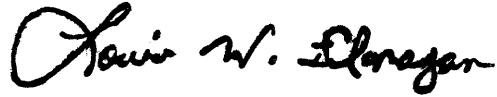
Defendants focus in their limited response on the need for full briefing on the motion sounding as one for preliminary injunction. The undersigned concludes that plaintiff has failed to show that the threatened irreparable harm is sufficiently immediate so as to warrant the extraordinary remedy of a temporary restraining order, without hearing further from defendants. In this instance plaintiff has failed to show good cause necessary to obtain a temporary restraining order in the limited circumstances proscribed by rule 65(b). As such, in this part, the motion is denied. Expedited briefing on the motion for preliminary injunction will be allowed, and decision on that part of the motion is held in abeyance pending development of the record.

CONCLUSION

For the foregoing reasons, plaintiff's motion for temporary restraining order (DE 23) is DENIED. To the extent, however, that plaintiffs' motion for expedited relief seeks an expedited case schedule, where plaintiff's request for preliminary injunction remains pending, request for expedited disposition is ALLOWED. The parties are DIRECTED to confer and provide a joint plan within fourteen (14) days of entry of this order for the orderly administration of this case, which defers to Rule 1 of the Federal Rules of Civil Procedure. Towards this end, the parties' proposed case schedule shall contemplate the anticipated motion to dismiss, and reflect consideration of a schedule that promotes the most efficient case resolution. If, for example, a pleading defect is readily curable, consent amendment may be appropriate. Moreover, to the extent a case can be positioned for disposition on request for both preliminary and permanent injunction, efficiencies accrue to both sides in such an instance. The parties shall fully and frankly engage in this discussion

on scheduling through responsible counsel. If consent on scheduling cannot be achieved, the parties' competing reports shall be filed on or before the established deadline.

SO ORDERED, this the 6th day of November, 2014.

A handwritten signature in black ink that reads "Louise W. Flanagan". The signature is written in a cursive, flowing style.

LOUISE W. FLANAGAN
United States District Judge