

IN THE CIRCUIT COURT OF THE [REDACTED] JUDICIAL CIRCUIT
IN AND FOR [REDACTED] COUNTY, FLORIDA

[REDACTED]

Plaintiff,

CASE NO.: [REDACTED]

v.

[REDACTED]

Defendant.

**PLAINTIFF'S/ DEFENDANT'S VERIFIED EMERGENCY
MOTION FOR INJUNCTION, ATTACHMENT, AND RECEIVERSHIP**

Plaintiff/ Defendant, [REDACTED] ("REQUESTER [REDACTED]"), by and through undersigned counsel and pursuant to Rule 1.160, Florida Rules of Civil Procedure, moves for an emergency temporary injunction against [REDACTED] PARTY/ PARTIES, [REDACTED] NAME(S) ("RESPONDENT NAME"), and requests the Court:

1. Enjoin [REDACTED] RESPONDENT NAME from [REDACTED] CONDUCT;
2. Enjoin [REDACTED] RESPONDENT NAME and their agents from making defamatory statements regarding [REDACTED] REQUESTER NAME to past, present, or potential clients and customers which interfere with business relationships between [REDACTED] REQUESTER NAME or [REDACTED] REQUESTER NAME and other clients or prospective clients; and

IN THE ALTERNATIVE, [REDACTED] REQUESTER NAME requests that the Court place it under the control of a capable receiver to evaluate the allegations contained in [REDACTED] REQUESTER NAME's [REDACTED] Motion/ Complaint/ Answer in the above-styled action.

The grounds in support of this motion are as follows:

INTRODUCTION

Summary of facts

FACTS

1. Summarize facts

INJUNCTION

A temporary injunction is warranted upon a showing of: “(1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) the substantial likelihood of success on the merits; and (4) considerations of the public interest.” *Vargas v. Vargas*, 771 So. 2d 594, 595 (Fla. 3d DCA 2000) (citation omitted). It has been long established that a trial court has wide discretion to grant or deny preliminary injunctive relief. *See Nelson v. State*, 94 So. 680, 681 (Fla. 1922).

I. **Argument Subheading 1**

The risk of irreparable harm under the circumstances is [REDACTED]. There is no adequate remedy at law. Accordingly, this element is satisfied.

II. **REQUESTER NAME has a reasonable probability of success on the merits.**

[REQUESTER NAME] has a reasonable probability of succeeding on its claims because... [ARGUMENT]. An injunction is necessary to prevent further damage to the goodwill and viability of [RESPONDENT NAME].

III. **The public interest will be served by the temporary injunction.**

“[t]he focus of preliminary injunctive relief is on maintaining long standing relationships and preserving the goodwill . . . built up over the course of years of doing business.” *N. Am. Products Corp. v. Moore*, 196 F. Supp. 2d 1217, 1230-31 (M.D. Fla. 2002). In Florida, “[p]ublic policy requires that in the management of corporate affairs a corporate officer serve first the

corporate interests and not his own.” *Fountainview Ass'n, Inc. v. Bell*, 214 So. 2d 609, 610 (Fla. 1968). Further argument The Court should, therefore, grant an emergency temporary injunction in this action to preserve the status quo while the case at issue is resolved.

RECEIVERSHIP

In the alternative, REQUESTER NAME moves this Court to appoint a Receiver. The purpose of a receivership is the preservation and proper disposition of property subject to litigation. It is an ancillary remedy and, except in rare circumstances, cannot be invoked in an action instituted for that purpose alone. *Armour Fertilizer Works v. First Nat. Bank of Brooksville*, 100 So. 362 (Fla. 1924). To that end, a receivership may be either passive, with the receiver acting merely to conserve the property, or active, wherein the receiver is appointed to run the business. *In re Chira*, 343 B.R. 361 (S.D. Fla. 2006). See also Brian S. Dervishi, Steven E. Seward, *Using Receiverships to Maximize the Value of Distressed Assets*, Fla. Bar. J., December 2009, at 8.

A person asking for the establishment of a receivership must “have a legal or equitable right to apply for such relief.” *Apalachicola Northern R. Co. v. Sommers*, 85 So. 361, 362 (Fla. 1920); see *Piambino v. Bailey*, 757 F.2d 1112 (11th Cir. 1985). Legal ownership, right to possession, or a lien on the property in question is sufficient, as is a showing that the property constitutes a special fund from which the petitioner is entitled to satisfaction of the demand. *Apalachicola*, 85 So. 361; *Warrington v. First Valley Bank*, 531 So. 2d 986 (Fla. 4th DCA 1988).

Ordinarily, a receiver will be appointed only when “it appears that the appointment is necessary, either to prevent fraud or to save the property from injury or threatened loss or destruction.” *Apalachicola*, 85 So. at 362; see also *Plaza v. Plaza*, 78 So. 3d 4 (Fla. 3d DCA

2011). The appointment of receiver is justified in when fraud or mismanagement threatens imminent danger to stockholders or creditors, to wind up the business of an insolvent corporation.

See Mills Development Corp. v. Shipp & Head, 171 So. 533 (Fla. 1936).

A receiver, especially one whose duties will include handling substantial sums of money, should be required to file a bond with good and sufficient surety in an adequate amount to be fixed by the court and conditioned on the faithful performance of the prescribed duties, ““unless exceptional circumstances are shown [that] preclude the need or ability to furnish such a bond.”” *Hollywood, LLC v. Sures*, 59 So. 3d 1232, 1233 (Fla. 4th DCA 2011) (quoting *Comprop Investment Properties, Ltd. v. First Texas Savings Ass'n*, 534 So. 2d 418 (Fla. 2d DCA 1988)). *See also Turtle Lake Associates Ltd. v. Third Financial Services, Inc.*, 518 So. 2d 959 (Fla. 1st DCA 1988), and cases cited therein. The bond amount must bear a reasonable relationship to the value of the property placed into receivership. *See Cohen v. Rubin*, 554 So. 2d 4 (Fla. 3d DCA 1989).

In the present case, application.

To protect and administer the Company/ies property, the receiver should be ordered to do the following: (1) marshal the assets or property of Company/ies; (2) as the receiver of a private corporation, the receiver has the duty to protect first the interests of the corporation's creditors, and second the interests of the stockholders. *Forcum v. Symmes*, 143 So. 630 (Fla. 1932); and (3) to see that taxes accruing on Company/ies' property in the receiver's hands are paid before the property is seized for nonpayment of taxes. *Patron v. Am. Nat'l Bank of Jacksonville*, 382 So. 2d 156 (Fla. 5th DCA 1980).

WHEREFORE, **REQUESTER NAME** respectfully requests that this Court enter an injunction or appoint a receiver over all property of **Company/ies**, at least until resolution of this suit.

Respectfully submitted,

By: _____

Attorney Name

Email

Address

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished pursuant to Florida Rule of Judicial Administration 2.516 on this _____, to the parties listed below.

By:

Attorney Name

SERVICE LIST

Counsel of Record identified in the Florida E-Filing Portal

EXHIBIT A – Affidavit in Support of Motion for Injunction or Receivership