

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

GOVERNMENT OF THE VIRGIN ISLANDS AND	)	
THE VIRGIN ISLANDS ATTORNEY GENERAL,	)	
	)	CIVIL NO. SX-16-CV-025
Petitioner,	)	
	)	
v.	)	
	)	
VIRGIN ISLANDS CASINO CONTROL	)	
COMMISSION,	)	
	)	
Respondent.	)	
_____	)	

ORDER DENYING TEMPORARY RESTRAINING ORDER

THIS MATTER comes before the Court on a Complaint and Memorandum in Support of Motion for Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief filed by Petitioner on January 27, 2016. For the reasons set forth below the Court will deny Petitioner's request for a temporary restraining order and will schedule this matter for a preliminary injunction hearing.

FACTUAL AND PROCEDURAL BACKGROUND

On January 27, 2016, Petitioner, Government of the Virgin Islands ("Government"), filed a Complaint seeking a temporary restraining order, a preliminary injunction, and a permanent injunction and declaratory judgment against the Virgin Islands Casino Control Commission ("VICCC"). The Government filed a Memorandum in Support of Motion for Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief on the same date. The Government's Complaint and supporting memorandum argue that 32 V.I.C. § 514(c) mandates that both the VICCC and the Attorney General of the Virgin Islands must be signatories on any bank account or credit card opened by the VICCC. The Government asserts

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

GOVERNMENT OF THE VIRGIN
ISLANDS

Plaintiff)

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vs)

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VIRGIN ISLANDS CASINO
CONTROL COMMISSION

CASE NO. SX-16-CV-0000025

ACTION FOR: TEMPORARY
RESTRAINING ORDER

Defendant

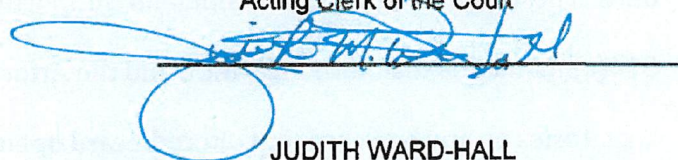
**NOTICE OF ENTRY OF
ORDER SCHEDULING
HEARING**

TO: JOSEPH PONTEEN, ESQ.,
ANDREW C. SIMPSON, ESQ.,
MALCOLM MGGREGOR, (EX. DIR. VICC)FAX

Please take notice that on January 28, 2016 a(n) ORDER SCHEDULING
HEARING dated January 28, 2016 was entered by the Clerk in the
above-entitled matter.

Dated: January 28, 2016

Estrella H. George
Acting Clerk of the Court



JUDITH WARD-HALL
COURT CLERK SUPERVISOR

to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

3RC & Co. v. Boynes Trucking Sys., 2015 V.I. Supreme LEXIS 22, at *5 (V.I. July 23 2015). “[T]he party seeking an injunction [bears] the burden of proof as to all four factors.” *Id.* (citations omitted).

The Government’s motion fails to satisfy at least the second prong of this inquiry—a showing that they will be irreparably harmed. “In order for a moving party to satisfy its burden of showing irreparable harm, it must demonstrate ‘clear showing of immediate irreparable injury, or a presently existing actual threat.’” *Acierno v. New Castle County*, 40 F.3d 645, 655 (3d Cir. 1994) (quoting *Ammund v. McGahn*, 532 F.2d 325, 329 (3d Cir. 1976). The Virgin Islands Supreme Court defines irreparable harm as “certain and imminent harm for which a monetary award does not adequately compensate.” *Yusuf v. Hamed*, 59 V.I. 841, 854 (V.I. 2013) (citations omitted). Monetary harms and costs “are compensable by money damages and thus do not constitute irreparable harm as a matter of law.” *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 728 (3d Cir. 2004). “Irreparable harm must be of a peculiar nature, so that compensation in money alone cannot atone for it.” *Id.* at 727 (citations omitted).

Furthermore, in order for the Court to grant the Government’s motion for a temporary restraining order without notice to the other party under Federal Rule of Civil Procedure 65, a party must articulate “specific facts [which] clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” FED. R. CIV. P. 65(b)(1)(A). The Government has failed in this regard. Instead, the Government’s motion points only to the monetary damages that it could suffer if the temporary restraining order is not issued. For instance, the Government argues that

that in January 2016, it learned of credit card and bank accounts which the VICCC opened at Banco Popular which do not include the Attorney General as a signatory, as required by section 514. The Office of the Attorney General reached out to Banco Popular to remedy this situation. However, the Attorney General now asserts that "there is a deliberate and concerted effort to delay or prevent the change of the signatories on the accounts as required by law and that VICCC intends to continue to violate Section 514 of Title 32 of the Virgin Islands Code." Mot. for TRO and Prelim. Inj. at 6-7. Accordingly, the Government initiated this action seeking injunctive and declaratory relief from the Court.

DISCUSSION

The Government's request for a temporary restraining order is governed by Rule 65(b) of the Federal Rules of Civil Procedure which provides, in relevant part:

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney 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)(A) and (B). "The factors to be considered when evaluating a temporary restraining order are the same factors courts consider when evaluating whether to issue a preliminary injunction." *Appleyard v. Juan F. Luis Hosp. & Med. Ctr.*, 2014 V.I. LEXIS 56, at *4 (V.I. Super. Ct. July 28, 2014) (citing *Bieros v. Nicola*, 857 F. Supp. 445, 446 (E.D. Pa. 1994)). The four factors relevant to deciding a motion for a preliminary injunction are:

(1) whether the movant has shown a reasonable probability of success on the merits; **(2)** whether the movant will be irreparably injured by denial of the relief; **(3)** whether granting preliminary relief will result in even greater harm

without the injunctive relief it requests "the Attorney General cannot ensure that the Division of Gaming Enforcement is receiving its 20 % share of the monies allocated to perform its enforcement responsibilities or exercise any control over how funds are disbursed from the accounts." Mot. for TRO and Prelim. Inj. at 9. Accordingly, the Government's argument for how it will be irreparably harmed is purely monetary. Again, "[a] preliminary injunction should not be granted if the injury suffered by the moving party can be recouped in monetary damages." *IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007). Because the Government has not carried its burden of showing irreparable harm, its motion for temporary restraining order will be denied. *Appleyard*, 61 V.I. at 584 ("A preliminary injunction is an 'extraordinary and drastic remedy' . . . never awarded as of right and may only be awarded upon a clear showing that the plaintiff is entitled to such relief."). Accordingly, after careful consideration and review, it is hereby

ORDERED that Petitioner's Motion for a Temporary Restraining Order is **DENIED**; it is further

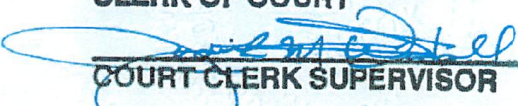
ORDERED that this matter is set for a hearing on the preliminary injunction request for **Tuesday, February 2, 2016, at 1:30 p.m. in Courtroom No. 203**; it is further

ORDERED that copies of this Order shall be provided to Attorney Joseph Ponteen and to the Virgin Islands Casino Control Commission.

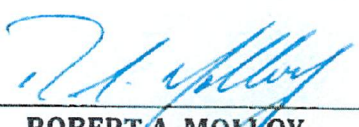
Dated: January 28, 2016

ATTEST:

ESTRELLA H. GEORGE
CLERK OF COURT


COURT CLERK SUPERVISOR

DATED: 1/28/16


ROBERT A. MOLLOY
Judge of the Superior Court