

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2022CP2901637
COUNTY OF LANCASTER)	
Ikram Ullah Kahn, et al.,)	ORDER DENYING MOTIONS FOR PRELIMINARY INJUNCTION AFTER NOTICE
)	
Plaintiffs,)	
)	
vs.)	
)	
Mustapha Saoui, et al.,)	
)	
Defendants.)	
)	
)	
)	

Heard: January 17, 2023 via Webex Virtual Courtroom
 Plaintiff's Attorneys: Morris McAdoo¹ and Kenneth D. Snow
 Defendant's Attorney: Walter K. Martens
 Court Reporter: None – Parties Consented to Webex Recording

Both sides are seeking injunctive relief on a preliminary basis. The motions are denied at this point.

This is a dispute between members who were or are congregants of the Islamic Community Center of South Charlotte (ICCSC), which is a religious non-profit corporation organized under South Carolina law. The plaintiffs and the defendants contend that the other side has acted inappropriately and without authority concerning election of the governing body of ICCSC, which is known as the Shura. The plaintiffs and defendant also assert that the opposing parties have declared that the membership of certain persons has been revoked in violation of the by-laws. In addition, the defendants claim that the plaintiffs have been involved in unlicensed copycat efforts

¹ Mr. McAdoo participated in the hearing. A motion to admit him pro hac vice has been filed and the proper confirmation by the Supreme Court of South Carolina is also in the file (though it is listed as a motion). The court understands that an order by a circuit judge accepting the admission is required. If an order is in this file, it was overlooked by the court, and the court was unaware during the hearing that none appears to have been filed. The attorneys need to take steps to finalize the admission, if such has not been done.

to create misleading information on the internet purporting to be communications issued by the proper ICCSC and that they or persons on their behalf have filed documents with the South Carolina Secretary of State that are false and/or forged in an effort to change the names of the proper representatives of ICCSC. Affidavits have been filed in support of both motions.

This dispute began in or around November of 2022 when it was time to select members of the Shura, along with its president. There is no dispute that the governing officials were appropriately chosen prior to that time. It is agreed that a list of proposed candidates was circulated supporting one side of this dispute (a list entitled “who we should vote for”). The defendants contend that those candidates are of a single ethnicity, which the defendants argue to be in contravention of the tenets of the organization that are designed to promote diversity. The defendants state that action was taken by proper majority vote to postpone the election in an effort to resolve the dispute, which prompted the president (Mr. Kahn) to circulate correspondence that this postponement was unlawful and illegal. From there, the dispute has grown to having each side taking steps to purportedly remove members, have elections, and establish two separate governing bodies.

REQUESTS FOR INJUNCTIVE RELIEF

The granting of a temporary injunction is traditionally implemented to maintain the *status quo*, in the nature of injunctive relief *quia timet*. An injunction is a drastic remedy issued by a court in its discretion to prevent irreparable harm. Injunctive relief is an extreme remedy and should be cautiously applied. *Scratch Golf Co. v. Dunes Residential Golf Props, Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004); *LeFurgy v. Long Cove Club Owners Assoc. Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994).

Traditionally, the sole purpose of an injunction is to preserve the *status quo* and is, therefore, prohibitory. It generally arises in situations that are akin to an emergency and used to prohibit the opposing party from acting to change the *status quo*. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001); *Mailsorce, LLC. v. M.A. Bailey & Assoc., Inc.*, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct.App. 2003). If, however, an injunction compels the performance of an affirmative act in order to undo an alleged wrong, it changes the *status quo* rather than preserving it. Such an injunction is a mandatory injunction, which is “an especially drastic remedy and is rarely granted.” *Johnson v. Phillips*, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (Ct.App. 1993) (*rev'd in part on other grounds by Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995)), citing *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950).

To be entitled to injunctive relief on a temporary basis, whether mandatory or prohibitory, to preserve legal rights pending the resolution of the litigation, the moving party must demonstrate (1) that it would suffer irreparable harm if the injunction is not granted; (2) that it will likely succeed on the merits of the underlying litigation; and, (3) that there is no other adequate remedy at law. *See Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010); *Levine v. Spartanburg Reg'l Serv. Dist. Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2006); *County of Richland v. Simpkins*, 346 S.C. at 669, 560 S.E.2d at 904.

Injunctions are equitable in nature and, therefore, are only “granted as a matter of sound judicial discretion, not as a matter of legal right.” *Johnson v. Phillips*, 315 S.C. at 417, 433 S.E.2d at 901. Moreover, “[b]ecause the remedy of injunction is drastic, the [moving party] has the burden of proving a clear case, reasonably free from doubt.” *Mims vs. Yarborough*, 343 F. Supp. 1146, 1161 (D.S.C. 1971), *affd*, 461 F.2d 1266 (4th Cir. 1972). Even then, injunctive relief should only

be granted “when necessary to prevent great and irreparable injury.” *Id.* (quoting 42 Am.Jur.2d, Injunctions, Section 26).

The ICCSC is a religious non-profit. Courts are required to show those organizations greater deference.

DISCUSSION

The parties have not established entitlement to temporary injunctive relief because they have failed to establish a likelihood of success on the merits. That burden has not been met because there are serious issues related to whether and to what extent either side will prevail, and there are also serious issues as to whether a court will be allowed to determine matters involving the governing of a religious organization. As for the claims related to cloning of internet sites, those form a closer question, and the court is not foreclosing a separate proceeding prior to the ultimate determination of the merits, wherein testimony may be taken to evaluate those issues. The propriety of any steps taken by either side to communicate with the members of ICCSC (as opposed to cloning accounts) is also dependent upon factual determinations that require a more complete evaluation that what is permitted in this context. Obviously, forging any document is a crime, and no one should be involved in forging documents of any kind, including those filed with the Secretary of State.

THEREFORE, IT IS ORDERED that the requests for temporary injunctive relief are denied.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page.]



Lancaster Common Pleas

Case Caption: Ikram Ullah Khan Et Al. VS Mustapha Saoui Et Al.

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Type: Order/Relief

Circuit Judge (Code #2050)

s/ William P. Keesley