

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

NO.

DEFENDANT

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

COMES NOW Plaintiff (hereinafter " "), and moves the Court for a Temporary Restraining Order and Preliminary Injunction and in support thereof states as follows:

1. On , , filed its Complaint in this cause seeking a judgment against Defendant for breach of contract, fraud and conversion arising out of Defendant's attempt to purchase a from Plaintiff by using a check on a non-existent account. See Affidavit of attached to the Complaint as Exhibit "C". The allegations of the Complaint are incorporated herein by reference.

2. After obtaining the from by utilizing the check on the non-existent account, furthered his/her scheme of defrauding Plaintiff by insisting to Plaintiff's employees that he/she had purchased a certified check to pay for the , but that the check and had been driven to by his/her husband/wife where he/she would be working until , . See Affidavit of attached to the Complaint as Exhibit "D".

3. Despite his/her repeated statements that his/her husband/wife had the in , on , , Defendant had the vehicle appraised by in , Mississippi. On , , Defendant sold the to for \$ and immediately endorsed the check back to as full prepayment on a () month lease on a . Both the sale of the and the purchase of the were without the knowledge or consent of Plaintiff.

4. Defendant utilized the aforesaid scheme with the purpose and intent of frustrating any judgment on the merits which could obtain by making said judgment uncollectible. Due to Defendant's fraud, Plaintiff is asking the court to declare a constructive trust with owning the beneficial interest.

5. Unless a Temporary Restraining Order and subsequent Preliminary Injunction is issued, will suffer irreparable harm for which there is no adequate remedy at law. remedy at law is inadequate because, Defendant 's past wrongful and fraudulent actions of utilizing 's asset to pay for the lease of the indicates that Defendant desires to frustrate payment of his/her debt. As with all rolling stock, the will depreciate in direct relation to the number of miles that it is driven as well as the other wear and tear on the vehicle.

6. further asserts that a Temporary Restraining Order and Preliminary Injunction should be issued for the reasons set forth above and for the following additional reasons:

(a) There is a substantial likelihood that will prevail on the merits of its claim against Defendant ;

(b) The granting of the Temporary Restraining Order and the Preliminary Injunction will not disserve the public interest;

(c) There is a substantial threat that will suffer irreparable harm if the Temporary Restraining Order and Preliminary Injunction is not issued; and

(d) The threatened injury to _____ outweighs the threatened harm the Temporary Restraining Order and/or Preliminary Injunction may do to Defendant.

7. _____ further requests that the Temporary Restraining Order be granted without notice because Defendant's actions have indicated that he/she may take additional steps to frustrate _____ judgment and/or make it uncollectible by hiding or otherwise degrading the vehicle, damaging the vehicle or having a lien placed on the vehicle.

8. A Temporary Restraining Order and Preliminary Injunction should issue against Defendant, requiring his/her to release the _____, Vehicle Identification Number _____, to the possession of the _____ County Sheriff's Department which will safeguard said vehicle pending a determination at the trial on the merits of _____ claim against Defendant, or until further order of this Court.

9. In addition to the Temporary Restraining Order and/or Preliminary Injunction, this Court should impose a constructive trust based on the use by the Defendant _____ of a scheme or artifice to defraud resulting in the Defendant's possession of property and/or a property interest which justly and fairly belongs to _____.

10. The imposition of a constructive trust will prevent any further unjust enrichment to the Defendant _____ at the expense of _____.

11. Based on the facts stated above and the Complaint filed herein, the imposition of the constructive trust should be from and after _____, _____, and the Defendant should be appointed and declared trustee by this Court for the period of time from and after _____, _____, until such time as this Court appoints an independent trustee and delivery of the property is completed to the independent trustee. As trustee, Defendant _____ should be made to account for all proceeds, property, loss and/or damage and/or depreciation to the property from the time period beginning _____, _____, up and through the time that this Court appoints an independent trustee in the vehicle and/or other property is delivered to that trustee.

12. Said Temporary Restraining Order and/or injunction prayed for, together with the imposition of the constructive trust to insure the safekeeping of the vehicle will not damage Defendant or lead to any undue prejudice to the Defendant, and accordingly any bond or other security required by this Court should be minimal.

WHEREFORE, PREMISES CONSIDERED, Plaintiff _____ prays for the following relief:

(a) That this Court issue a Temporary Restraining Order without notice directing the _____ County Sheriff's Department to take immediate possession of the _____, Vehicle Identification Number _____ and shall safeguard said vehicle pending a determination at the trial on the merits of _____'s claim against Defendant, or until further order of this Court;

(b) That this Court set a hearing at the earliest possible opportunity on Plaintiff's Motion for a Preliminary Injunction;

(c) That this Court impose a constructive trust over the _____, proceeds from the sell thereof, and/or _____, with the Defendant accountable as trustee from and after _____, _____, until such time as this Honorable Court appoints an independent trustee and the independent trustee takes possession of the vehicle or other property; and

(d) That said Temporary Restraining Order and Preliminary Injunction be ordered with minimal bond or security.

DATED, this the _____ day of _____, 20 _____.

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for