

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

Case No. 03-Civ-80515-Hurley/Lynch

KATY JOHNSON,

Plaintiff,

vs.

TUCKER MAX,

Defendant.

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**NOTICE OF MOOTNESS OF DEFENDANT'S EMERGENCY MOTION  
TO DISSOLVE EX PARTE TEMPORARY INJUNCTION**

Defendant Tucker Max, by and through undersigned counsel, hereby gives notice to the Court and the Plaintiff that Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction, filed June 17, 2003, is now moot by operation of law. While Defendant was entitled under Fed.R.Civ.P. 65(b) to a hearing on the motion to dissolve by June 19th, and consequently a decision on the merits of the injunction, the controlling law is nonetheless clear that the injunction expired on Friday, June 20, 2003, thereby rendering Defendant's motion to dissolve moot. As the Supreme Court has unequivocally held:

An ex parte temporary restraining order issued by a state court prior to removal remains in force after removal no longer than it would have remained in effect under state law, but in no event does the order remain in effect longer than the time limitations imposed by Rule 65(b), measured from the date of removal.

*Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439-40 (1974) (emphasis added).

The Court reasoned:

[Respondent] had a right to the protections of the time limitation in Rule 65(b) once the case was removed to the District Court. The Federal Rules of Civil Procedure, like other provisions of federal law, govern the mode of proceedings in federal court after removal. ... The stringent restrictions imposed by ... Rule 65 on the availability of ex parte temporary restraining orders reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute. Ex parte temporary restraining orders are no doubt necessary in certain circumstances, but under federal law they should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as it is necessary to hold a hearing, and no longer.

*Id.* at 438-39 (emphasis added). *See also, Jackson v. American Savings Mortgage Corp.*, 924 F.2d 195, 199 n.9 (11th Cir. 1991) (“*Granny Goose* laid down the rule that ... ‘in no event does [an ex parte injunction issued in state court prior to removal] remain in force longer than the time limitations imposed by Rule 65(b), measured from the time of removal.’”); *Rothner v. City of Chicago*, 879 F.2d 1402, 1419 (7th Cir. 1989) (same).

The Court in *Granny Goose* thus made clear that “[o]nce a case has been removed to federal court, it is settled that federal rather than state law governs the future course of proceedings ....” 415 U.S. at 437. *See also, Prewitt v. City of Greenville*, 161 F.3d 296, 299 (5th Cir. 1998) (same). This rule has led the court of appeals, in removed actions, to “take the case as we find it on removal and treat everything that occurred in the state court as if it had taken place in the district court below.” *In re Savers Federal Savings & Loan Assoc.*, 872 F.2d 963, 966 (11th Cir. 1989).

Indeed, this Court’s Order Requiring Counsel to Meet and File Joint Scheduling Order, dated June 11, 2003, was issued pursuant to the Federal Rules of Civil Procedure. For example, paragraph 2 of the Order requires the parties to conduct a Rule 26(f) scheduling conference “regardless of the pendency of a motion for remand,” and paragraph 4 advises that the complaint

may be dismissed “pursuant to Fed.R.Civ.P. 37(b)” if no joint scheduling report is filed as required by Local Rule 16.1.

In this matter, Defendant filed the Notice of Removal in this Court as well as in the state court on Friday, June 6, 2003. *See* Exhibit A hereto (copy of state court filing). Removal was therefore effected on June 6th. *See Anthony v. Runyon*, 76 F.3d 210, 214 (8th Cir. 1996) (“removal is effected when the notice of removal is filed with the state court and at no other time”). Accordingly, under Rule 65(b), Fed.R.Civ.P., the *ex parte* injunction expired 10 days later. *Granny Goose, supra*, 415 U.S. at 439-40. Counting only business days pursuant to Fed.R.Civ.P. 6(a), the date of expiration of the *ex parte* injunction was Friday, June 20, 2003.

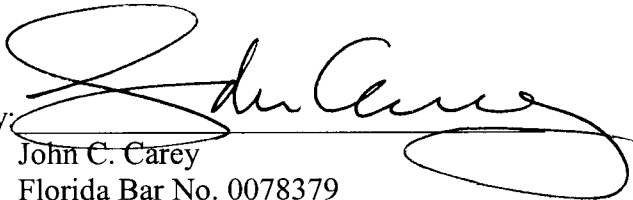
A proposed Order denying the Defendant’s emergency motion to dissolve, and vacating the *ex parte* injunction, is attached for the Court’s convenience as Exhibit B hereto. *See Biomedical Instrument and Equipment Corp. v. Cordis Corp.*, 797 F.2d 16, 18 (1st Cir. 1986) (“when a case is removed to federal district court, that court must dissolve any *ex parte* state court injunction or temporary restraining order – once the maximum time limits that Federal Rule of Civil Procedure 65(b) authorizes for an *ex parte* order have expired”) (citing *Granny Goose*; emphasis in original).

In the event that Plaintiff attempts to seek re-entry of the injunction on an *ex parte* basis in this Court, Defendant requests notice of, and a hearing on, any such attempt, and would respectfully ask the Court to treat the Defendant’s Emergency Motion to Dissolve, already on file, as a memorandum of law in opposition to any such motion by Plaintiff.

Dated: June 23, 2003

Respectfully submitted,

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By:   
John C. Carey  
Florida Bar No. 0078379  
Richard J. Mocker  
Florida Bar No. 0563986

**Counsel for Defendant**

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served by United States mail this 23rd day of June, 2003, on **Michael I. Santucci, Esq.**, Law Offices of Michael I. Santucci, P.A., Counsel for Plaintiff, 500 West Cypress Creek Road, Suite 500, Fort Lauderdale, Florida 33309.

  
John C. Carey

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

03 - 80515

Case No.

WILKINSON

KATY JOHNSON,

Plaintiff,

vs.

TUCKER MAX,

Defendant.

DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION

JUN - 6 2003

COPY / ORIGINAL  
RECEIVED FOR FILING

STANLEY J. LYNCH, JR.  
UNITED STATES MAGISTRATE JUDGE

RECEIVED  
JUN 10 2003

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Tucker Max hereby files this Notice of Removal and states in support as follows:

1. Tucker Max is an original defendant in a civil action filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Case No. 03-CA-004867.
2. This Notice of Removal is filed in the United States District Court for the Southern District of Florida, West Palm Beach Division, within the time allowed by law for removal of civil actions.
3. The United States District Court for the Southern District of Florida, West Palm Beach Division, is the district and division embracing the place where the state court action is pending.
4. A copy of this Notice of Removal is being contemporaneously filed with the Clerk of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida as required by 28 U.S.C. §§ 1446(d).

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Case No. 03-CA-004867

KATY JOHNSON,

Plaintiff,

vs.

TUCKER MAX,

Defendant.

DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION  
JUN - 6 2003  
COPY / ORIGINAL  
RECEIVED FOR FILING

**NOTICE OF FILING NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant files herewith a copy of his Notice of Removal, the original of which was filed June 6, 2003 in the United States District Court for the Southern District of Florida.

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP  
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200 South Biscayne Boulevard  
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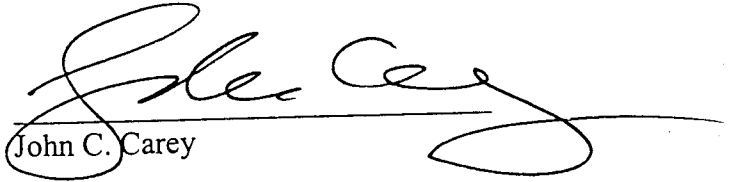
By: 

John C. Carey  
Florida Bar No. 0078379  
Richard J. Mocker  
Florida Bar No. 0563986

**Counsel for Defendant**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by United States mail this 6th day of June, 2003, on **Michael I. Santucci, Esq.**, Law Offices of Michael I. Santucci, P.A., Counsel for Plaintiff, 500 West Cypress Creek Road, Suite 500, Fort Lauderdale, Florida 33309.

  
John C. Carey

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# EXHIBIT B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

Case No. 03-Civ-80515-Hurley/Lynch

KATY JOHNSON,

Plaintiff,

vs.

TUCKER MAX,

Defendant.

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**ORDER**

**THIS CAUSE** is before the Court on the Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction and Defendant's Notice of Mootness of Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction.

The state court issued an *ex parte* temporary injunction against Defendant on May 6, 2003. Defendant timely filed a Notice of Removal both in this Court and in the state court on June 6, 2003.

"The Federal Rules of Civil Procedure, like other provisions of federal law, govern the mode of proceedings in federal court after removal." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 438-39 (1974). Pursuant to Rule 65(b), Fed.R.Civ.P., a temporary injunction issued on an *ex parte* basis expires automatically after ten (10) days. As the Supreme Court held in *Granny Goose*:

An *ex parte* temporary restraining order issued by a state court prior to removal remains in force after removal no longer than it would have remained in effect

under state law, but in no event does the order remain in effect longer than the time limitations imposed by Rule 65(b), measured from the date of removal.

415 U.S. at 439-40.

Accordingly, calculating the 10-day time period pursuant to the provisions of Rule 6(a), Fed.R.Civ.P., the temporary injunction issued *ex parte* by the state court prior to removal expired by operation of law on June 20, 2003.

It is therefore **ORDERED AND ADJUDGED** that the temporary injunction is hereby **VACATED**. *Granny Goose, supra*, 415 U.S. at 439-40. *See also, Biomedical Instrument and Equipment Corp. v. Cordis Corp.*, 797 F.2d 16, 18 (1st Cir. 1986) (“when a case is removed to federal district court, that court must dissolve any *ex parte* state court injunction or temporary restraining order – once the maximum time limits that Federal Rule of Civil Procedure 65(b) authorizes for an *ex parte* order have expired”) (emphasis in original).

It is further **ORDERED AND ADJUDGED** that Defendant’s Emergency Motion to Dissolve *Ex Parte* Temporary Injunction is **DENIED AS MOOT**.

**DONE AND ORDERED** in Chambers at West Palm Beach, Florida this \_\_\_\_ day of June, 2003.

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HONORABLE DANIEL T. K. HURLEY  
UNITED STATES DISTRICT JUDGE

Copies furnished:

Michael I. Santucci, Esq.  
John C. Carey, Esq.