

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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**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR  
ENLARGEMENT OF TIME TO RESPOND TO DEFENDANT'S  
EMERGENCY MOTION TO DISSOLVE EX PARTE TEMPORARY INJUNCTION**

Pursuant to S.D. Fla. L.R. 7.1 and Rule 65(b), Fed.R.Civ.P., Defendant hereby responds to Plaintiff's motion for an enlargement of time to respond to Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction, and in support states:

Defendant strongly opposes Plaintiff's attempt to keep its facially invalid injunction on life support for another week. Having sought and obtained the injunction on a so-called "emergency" basis without providing any notice to Defendant, it is completely disingenuous for Plaintiff's counsel to now claim he needs more "time" to defend the injunction.

Indeed, the fact that Plaintiff claims to need more time to defend the *ex parte* injunction serves only to highlight that the injunction never should have been issued in the first place. Moreover, Rule 65(b) of the Federal Rules of Civil Procedure requires that a motion to dissolve an injunction or restraining order issued *ex parte* be heard on two (2) days' notice. The injunction is, *inter alia*, a facially unconstitutional order that irreparably impinges on

Defendant's First Amendment freedoms. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”). Accordingly, based on the legal authorities cited in Defendant's Emergency Motion to Dissolve, as well as those cited in the brief filed by *amicus curiae* American Civil Liberties Union of Florida, Inc., this Court should immediately dissolve the injunction. If Plaintiff desires, she can always request the Court to reinstate the injunction at a later date, when her counsel has the “time” to research the applicable legal authorities. Counsel's alleged lack of time now, however, surely cannot take precedence over Defendant's constitutional, or procedural, rights. What's more, it was incumbent upon Plaintiff's counsel to know the law before asking the state court judge to issue the injunction.

In support of the request for an extension, Plaintiff argues that Defendant filed a Notice of Removal and a Motion to Dismiss prior to seeking dissolution of the injunction. (Motion at 2). Plaintiff neglects to tell the Court, however, that the Motion to Dismiss had to be filed earlier because Plaintiff's counsel refused to consent to an extension of time for Defendant to respond to the Complaint unless Defendant stipulated to the permanent entry of the temporary injunction. In light of such an obstinate and outrageous demand, Defendant had no choice but to file the Motion to Dismiss first, in order to stave off an entry of default that had been threatened by Plaintiff. More significantly, Defendant does not waive his right to an expedited hearing under Rule 65(b), Fed.R.Civ.P., under any circumstances. Having moved to dissolve an injunction that was entered against him *ex parte*, Defendant is entitled under the Rules to the expedited consideration of his motion.

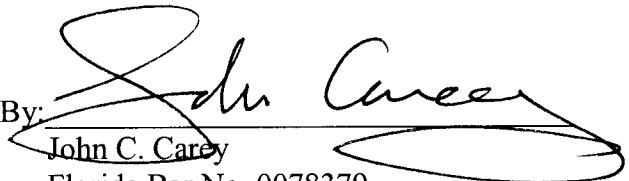
Plaintiff's motion for enlargement of time should be denied. Defendant's Emergency Motion to Dissolve should be granted. A proposed Order is attached hereto for the Court's convenience.

Dated: June 19, 2003

Respectfully submitted,

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**Counsel for Defendant**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by facsimile and United States mail this 19th 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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**ORDER**

**THIS CAUSE** is before the Court on the Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction and Plaintiff's Motion for Enlargement of Time to File Her Memorandum of Law in Opposition to Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction.

The Court, having reviewed the file and motions and being otherwise fully advised in the premises, does hereby:

**ORDER AND ADJUDGE** that the Plaintiff's Motion for Enlargement of Time to File Her Memorandum of Law in Opposition to Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction is **DENIED**.

It is further **ORDERED AND ADJUDGED** that the Defendant's Emergency Motion to Dissolve *Ex Parte* Temporary Injunction is **GRANTED**. A memorandum opinion shall be issued in due course.

**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.