

## PRELIMINARY STATEMENT

On July 19, 2004 a 23 year old Brazilian immigrant wood flooring installer entrusted \$33,000 of his life savings to defendants for them to wire it to his brother in Brazil to invest in a bakery business. Instead of wiring the money, defendants took it for themselves, never to be seen again.

By their own admissions, Defendants Ronaldo Jose Martins and Andrea Carla Martins, the principals of a proprietorship called Brazil Travel, are in the process of selling off the only property they own in New Jersey, 378 West Columbus Avenue in Long Branch. The facts demonstrate they are likely in the process of absconding to Brazil with plaintiffs' \$33,000.

Plaintiff Mateus Gontijo brings this emergent application to prevent defendants Ronaldo Jose Martins; Andrea Carla Martins; Brazil Travel from perfecting this injustice, by temporarily restraining them from transferring any assets within the jurisdiction of the Court which exceed \$5000 in total value, pending further order of the Court.

## STATEMENT OF FACTS

For the last seven years Plaintiff Mateus Gontijo has worked as an installer of hard wood floor. The work is back breaking and labor intensive. For the last seven years Mateus' hours have consistently been 8:00 a.m. to 8:00 p.m., at least six days a week. (*Exhibit A, Certification of Mateus Gontijo*)

From this work Mateus managed to save some money. In early July, 2004, his brother alerted him to an investment opportunity whereby they would together buy a bakery business in the capitol of Brazil, Brasilia. The plan was for Mateus to wire his brother about \$33,000 which would be used to buy purchase this bakery business. *(Exhibit A, Certification of Mateus Gontijo)*

To effectuate this wire transfer, on July 19, 2004, Mateus went to a business in Long Branch called EZ-Tech Solutions which is owned by defendant Celi Zarrate. EZ-Tech Solutions, together with the rest of the defendants, agreed to wire \$33,571.00 to a designated bank account in Brazil held by the person selling the business to Mateus and his brother. Mateus was assured the monies would be deposited in the Brazilian bank account with two days. Two days came and went and the money never left the United States. In fact, to this day, nearly \$34,000.00 of Mateus's life savings has been neither wired to Brazil nor returned to Mateus. *(Exhibit A, Certification of Mateus Gontijo)*

Given the early stage of this litigation the complete relationship among all the parties is unclear. However, what is known is that EZ-Tech Solutions is owned by defendant Celi Zarrate. *(Exhibit B, EZ-Tech Solutions Website)* EZ-Tech Solutions has a relationship with defendants Ronaldo Jose Martins and Andrea Carla Martins,

husband and wife, who appear to be the principals and alter ego of defendant Brazil Travel. The facts demonstrate that EZ-Tech Solutions collects the wire deposits and then is supposed to see to it they are deposited in the designated bank account. (*Exhibit A, Certification of Mateus Gontijo*) (*Exhibit B, EZ-Tech Solutions Website*)

In fact, on August 5, 2004, at the request of defendants Ronaldo Jose Martins and Andrea Carla Martins, an e-mail they sent was published in a local newspaper concerning this situation. Among other things, defendants Ronaldo Jose Martins and Andrea Carla Martins admit:

***We are informing our clients and agents that we will be closed temporarily due to an internal administration error, resulting in a very large monetary deficit in our financing department.***

***\*\*\****

***We are conscious of the disturbances that this situation is causing to our clients and we lament how you have been affected.***

***\*\*\****

***I, Ronaldo Jose Martins, President of Inter Meso, assure that shortly the situation will be resolved and that all of the transactions will be repaired without prejudice to our clients.***

*(Exhibit 2 to Verified Complaint)*

As indicated in this published e-mail, defendants Ronaldo Jose Martins, Andrea Carla Martins and Brazil Travel owe a lot of money to a lot of people, including plaintiff Mateus Gontijo. They also own a real estate property in Long Branch. (*Exhibit C, Deed and Mortgage Documents to 378 West Columbus address*). They

have already admitted they intend to sell this property to address these debts. (*Exhibit A, Certification of Mateus Gontijo*) In reality, it appears defendants Ronaldo Jose Martins and Andrea Carla Martins seek to sell this property as soon as possible and abscond to Brazil with it, and whatever might be left of plaintiff's \$34,000.

**POINT ONE**

**PLAINTIFF HAS SATISFIED THE REQUIREMENTS FOR A  
TEMPORARY RESTRAINING ORDER**

Plaintiff's seek the assistance of the Court in granting equitable relief pursuant to Rule 4:67-2 and other relief as provided by Rules 4:52, 4:53-1 and NJSA 14A:14-2, seeking an Order:

A. Freezing defendant's assets in excess of \$5000, both individually and in any corporate form, pending further order of this Court;

B. Enjoining dissipation of assets in excess of \$5000 by defendants, individually and in any corporate form;

C. Any Relief the Court should find just and equitable.

A temporary injunction is an extraordinary equitable remedy utilized primarily to forbid and prevent irreparable injuries; it must be administered with sound discretion and always on consideration of justice, equity and morality involved in a given case. Suenram v. Society of Valley Hospital, 155 N.J. Super. 593 (Law Div. 1977).

The standards for granting relief by way of temporary restraining order are set forth in Crowe v. De Gioia, 90 N.J. 126 (1982) and its progeny. The four basic criteria examined by the Court when contemplating whether a temporary restraining order or preliminary injunction should issue are set forth *infra*.

First, a preliminary injunction or temporary restraining order should not issue except when necessary to prevent irreparable harm. Id. at 132. Harm is generally considered

irreparable in equity if it cannot be redressed adequately by monetary damages. Pecuniary damages may be inadequate because of the nature of the injury or of the right affected. Id. at 132-133. Second, the party seeking the temporary restraints must be faced with substantial, immediate and irreparable harm if the injunction does not issue. Id., see also Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303-304 (E. & A. 1878).

The third criteria examined by the Court is whether the party seeking temporary restraints has demonstrated a reasonable probability of eventual success on the merits. See Zoning Bd. of Adj. v. Services Electric Cable Television, 198 N.J. Super. 370, 378-379 (App. Div. 1985). The underlying legal claim should be one of settled law. Crowe, 90 N.J. at 133. Finally, the Court must consider the relative hardship to the parties in granting or denying the relief, and thereafter, must balance the equities involved. Id. at 134. Should the Court determine that the possible harm to the party who seeks the injunction outweighs the potential harm to the party against who the injunction is sought, the request for injunctive relief or temporary restraints should be granted. See Suenram, 155 N.J. Super. at 597.

Plaintiff herein can demonstrate that all four of the criteria considered by the Court when determining whether temporary restraints should issue are satisfied in the case at bar. The relief sought is clearly equitable in nature. First, plaintiff has no adequate remedy at law should the restraints not be granted because defendants against whom this application is

made will in all likelihood sell the 378 West Columbus address and abscond to Brazil. Monetary or pecuniary damages will not compensate plaintiff for the harm it will certainly suffer if the actions of defendants are not restrained.

Second, plaintiff is certain to suffer substantial, immediate and irreparable harm if the defendants are not restrained in the form requested by plaintiff. Once they sell the property and abscond, plaintiff will never be able to get back his \$34,000.

Third, as will be set forth at length *infra*, plaintiff has demonstrated that there is a reasonable probability of eventual success on the merits of its claim as defendants themselves have already admitted orally and in a writing published in the newspaper at their request, that they are at fault for the complained of actions.

Finally, plaintiff will be greatly harmed if the restraints are not granted. The potential harm that will result to plaintiff should defendant not be enjoined substantially outweigh any possible harm or inconvenience on the part of the defendant. Therefore, the scales of equity fall squarely in favor of restraining the defendant from acting in the manner outlined in this Order to Show Cause.

For the foregoing reasons, plaintiff respectfully suggests that all of the necessary criteria required by the Court when granting a restraining order have been satisfied. Therefore, plaintiff requests that this Court grant the restraining order.

**A. Plaintiff Has No Adequate Remedy At Law.**

As stated previously, the first criteria examined by the Court when deciding whether a temporary restraining order or preliminary injunction should issue is whether the party seeking restraint will suffer irreparable harm, where a remedy of law is inadequate. See Crowe, 190 N.J. at 132-133. Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. Pecuniary damages may be inadequate because of the nature of the injury or the right affected. Id. at 132-133.

In the case at bar, irreparable harm is that plaintiff will forever lose his \$34,000. At that point money damages will be inadequate because it would be a mere paper judgment, with key defendants who have already admitted liability having absconded to Brazil.

**B. Plaintiff Will Suffer Substantial, Immediate, and Irreparable Harm If The Temporary Restraining Order Does Not Issue.**

The second criteria examined by the Court with respect to the issuance of temporary restraints or preliminary injunction is that the party seeking the temporary restraints must be faced with substantial, immediate and irreparable harm if the injunction does not issue. Crowe, 90 N.J. at 132-133. See also, Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303-304 (E. & A. 1878).



The harm to defendant is substantial, immediate and irreparable if defendants are allowed to sell their property and otherwise transfer their assets now.

**C. There Is A Reasonable Probability That Plaintiff Will Be Successful On The Merits.**

The third criteria examined by the Court when deciding whether a temporary restraining order or preliminary injunction is warranted is whether the party seeking temporary restraints has demonstrated reasonable probability of eventual success on the merits. See, Zoning Bd. of Adj. v. Services Electric Cable Television, 198 N.J. Super. 370, 378-379 (App. Div. 1985). The underlying legal claim should be one of settled law. Crowe, 90 N.J. at 133. It is defendant's position that the law with respect to plaintiff's actions is well settled. This is an area of law, which is settled, leaving no room for doubt as to the outcome of the case on the merits.

Plaintiff respectfully suggests that it has demonstrated a reasonable probability of eventual success on the merits, satisfying the third criteria for the issuance of a temporary restraining order. Plaintiff has set forth in stark detail his having been victimized by defendants. Furthermore, the defendants against whom this application is made have already admitted such both orally and in a writing published at their request. There is no question that the over \$33,000 is owed by to plaintiff, and given the clear Consumer Fraud here, this amount must be trebled and plaintiff awarded counsel fees.

**D. In Balancing The Equities, It Is Clear That The Potential Harm That Will Result To The Plaintiff And Its Employees Outweighs Any Potential Harm To The Defendant.**

The fourth and final criteria the Court must consider is the relative hardships to the parties in granting or denying the relief, and thereafter, must balance the equities involved. Crowe, 90 N.J. at 134. Should the Court determine that the possible harm to the party who seeks the injunction outweighs the possible harm to the party against whom the injunction is sought, the request for injunctive relief for temporary restraints should be granted. See Suenram, 155 N.J. Super. at 597.

As stated previously in Points I(A) and I(B), the harm that will ensue to the plaintiff should the defendant not be restrained, will be substantial, immediate and irreparable. Plaintiff has no adequate remedy at law available, as there is no monetary amount that could compensate it for the probable harm. The harm that will be suffered by the plaintiff would be overwhelming to him. Indeed, realizing he has been scammed out of nearly \$34,000 has caused plaintiff tremendous anxiety.

There is essentially no harm that can come to the defendants should the restraints issue.

Weighing the potential harm likely to result to the plaintiff if the restraining order does not issue against any conceivable harm to the defendants, squarely tips the equitable scales in favor of granting the restraining order. The hardships that will certainly be imposed upon the plaintiff is clearly more

significant than those that may or may not result to the defendant.

Based upon the foregoing, the plaintiff submits that the fourth and final criteria examined by the Court when determining whether a restraining order should issue, has been satisfied. The hardship and irreparable harm that will ensue the plaintiff clearly and overwhelmingly outweighs any potential harm or mere inconvenience that may result to the defendants. Therefore, the plaintiff respectfully requests that the Court issue the restraining order as requested by plaintiff.

### **CONCLUSION**

Based upon the foregoing, plaintiff has demonstrated that all four criteria necessary for the issuance of a restraining order have been satisfied. Should the defendants be allowed to proceed in the manner previously outlined: (1) the plaintiff will have no adequate remedy at law to compensate them for the irreparable harm which will ensue; (2) plaintiff will suffer substantial, immediate and irreparable harm; (3) plaintiff has demonstrated a reasonable probability of eventual success on the merits, and (4) in balancing the equities, the potential harm that will result to the plaintiff outweighs any potential harm or inconvenience to the defendants.

Therefore, the plaintiffs respectfully request that this Court issue a temporary restraining order against the defendants, enjoining defendants from proceeding in the manner previously outlined.

Respectfully submitted,  
Lynch ♦ Martin

By: GERALD H. CLARK, ESQ.  
*Attorneys for Plaintiff*

Dated: August 12, 2004