

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

SHIPJOY, LLC,

Petitioner.

Case No.:

vs.

LT No.: 2024-005842-CA-01

SVES LLC, SVES GO, LLC, SVES
SWISS, LLC, and SVES APPAREL,
LLC

Respondents.

_____ /

PETITION FOR WRIT OF MANDAMUS

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COMES NOW ShipJoy, LLC (“ShipJoy”), by and through its undersigned counsel, and petitions the Court for writ of *mandamus* compelling the Honorable Judge Ruiz of the Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida, a formal party to this petition, to hear its Motion to Dissolve the temporary injunction granted *ex parte* to and, in support thereof, states the following:

I. INTRODUCTION

ShipJoy, LLC, (“Petitioner”) petitions for a writ of *mandamus* directing the Honorable Judge Ruiz of the Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida to hear Petitioner’s Motion to Dissolve an *ex parte* temporary injunction (see Appendix #5) within the time prescribed by Fla. R. Civ. P. 1.610(d) of five (5) days from the application for hearing.

II. JURISDICTIONAL INVOCATION

This Honorable Court has original jurisdiction to issue the writ requested under Article V, § 4(b)(3) of the Constitution of the State of Florida and Fla. R. App. P. 9.030(b)(3). This Honorable Court has appellate jurisdiction of case no. 2024-005842-CA-01, filed in the Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida. Therefore, this Court has competent jurisdiction to entertain a petition for writ of

mandamus in this cause to compel the Honorable Judge Ruiz to hear Petitioner’s Motion to Dissolve the temporary injunction granted *ex parte* to SVES, LLC, SVES GO, LLC, SVES SWISS, LLC, and SVES APPAREL, LLC (“SVES”). See Appendix #1, 4-5. Like other original proceedings before the appellate courts, *mandamus* is governed by Fla. R. App. P. 9.100.

III. STATEMENT OF PERTINENT FACTS

1. On April 2, 2024, SVES filed an emergency verified petition for injunction to prevent Petitioner from enforcing its warehouse lien on SVES’s goods currently stored at Petitioner’s warehouses. See Appendix, 3-9.
2. The lower court granted the temporary injunction *ex parte* on Thursday, April 4, 2024, and enjoined Petitioner from proceeding with the sale, auction or transfer of SVES’s goods. See Appendix, 10-12.
3. An evidentiary hearing was scheduled for April 8, 2024, at 10 a.m. for the Court to consider the Petition in its entirety. See Appendix, 13-15. The evidentiary hearing was canceled with no notice from the Court to Petitioner or its counsel and has yet to be rescheduled.

4. On April 8, 2024, Petitioner filed a Motion to Dissolve and an Application for a Hearing on its Motion to Dissolve to be held within five (5) days. See Appendix, 16-36.
5. Pursuant to instructions on the Honorable Judge Ruiz's webpage¹, a courtesy copy of the original motion was emailed to the Honorable Judge Ruiz's chambers.
6. Also on April 8, 2024, SVES filed a motion for extension of time seeking an extension of time for hearing Petitioner's Motion to Dissolve that, if granted, would more than double the time frame for the court to hear the Motion to Dissolve. See Appendix, 37-42.
7. On the same day, Petitioner filed its response in opposition to SVES's motion for extension citing the five (5) day deadline to hear the Motion to Dissolve pursuant to Fla. R. Civ. P. 1.610(d). See Appendix, 43-46.

¹ Under the Comments tab: "6. PROCEDURES FOR PLACING MOTIONS ON CALENDAR: Motions must be e-filed with the Clerk's Office. Send a Courtesy Copy of the original motion to chambers via email. The JA will reply via email with the date that the motion will be set on calendar. The movant is responsible for preparing, filing and serving a Notice of Hearing on all parties. (NOTE: The Clerk's Office does not provide Judge Ruiz with copies of motions which Counsel submits through E-filing.)"

8. On April 9, 2024, in a second attempt to have the Court schedule the motion within five (5) days, Petitioner submitted its Motion to Dissolve as an emergency motion with a request for hearing via courtMAP.
9. To date, despite Petitioner's best and repeated efforts, a hearing for its Motion to Dissolve has not been scheduled.
10. The Honorable Judge Ruiz's chambers insist the parties agree on a date, and the only date counsel for the parties were able to agree on, albeit begrudgingly on the part of Petitioner, was April 22, 2024.
11. The only available time the Judge's chambers offered on April 22, 2024, was 12 p.m. Petitioner stated it was available at that time, but counsel for SVES rejected that time.
12. Counsel are at an impasse and cannot agree on a date and time that is compatible with the availability provided by the Judge's chambers, much less one that falls within the five (5) days subsequent to Petitioner's application for a hearing on the Motion to Dissolve.
13. Five (5) days from the application for hearing on the Motion to Dissolve would be April 15, 2024, if considering the application for hearing filed on April 8, 2024 and subsequent request for hearing

sent to the Judge's chambers, or April 16, 2024, if considering the date Petitioner submitted a request for hearing via courtMAP.

14. No hearing on the Motion to Dissolve has been scheduled.

IV. NATURE OF RELIEF SOUGHT

Due to the lower court's failure to comply with the rules of procedure, Petitioner respectfully asks this Honorable Court to issue a writ of *mandamus* to compel Judge Ruiz to set a hearing on its Motion to Dissolve the Temporary Injunction within the mandatory five (5) days from the date of its application for a hearing on the motion.

V. ARGUMENTS AND AUTHORITIES

"Under Florida law, *mandamus* is the proper vehicle 'to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.'" Stern v. City of Miami Beach, 359 So. 3d 1209, 1211 (Fla. 3d DCA 2023)) (internal citation omitted). "To establish entitlement to relief in *mandamus*, the petitioning party must plead "a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law." Id.; see also Huffman v. State, 813 So.2d 10, 11 (Fla. 2000). Petitioner argues that this Court should issue a writ of *mandamus* because the lower court has failed to perform its indisputable legal duty by refusing to schedule a hearing on

Petitioner's Motion to Dissolve within the five days set forth in Fla. R. Civ. P. 1.610(d). Petitioner has no adequate remedy at law besides a writ of *mandamus* to compel the lower court to comply with the rules of procedure.

A. CLEAR LEGAL RIGHT TO THE REQUESTED RELIEF

Pursuant to Fla. R. Civ. P. 1.610(d), a party against whom a temporary injunction has been granted may move to dissolve the injunction at any time. The motion to dissolve **shall** be heard within 5 days after the movant applies for a hearing on the motion. The language chosen (shall) is mandatory, not permissive. See Modani Holdings, LLC v. Athea, 251 So. 3d 883 (Fla. 3d DCA 2018) (holding that the trial court needed to hold a hearing within five days of the filing of the enjoined party's motion to dissolve to be in compliance with Rule 1.610); Tsiperfal v. Ohio Sav. Sec., Inc., 756 So. 2d 1087, 1088 (Fla. 4th DCA 2000) (“[Petitioner's motion to dissolve] should have been heard within five days of his seeking an immediate hearing.”); Hicks v. Chamberlin, 710 So. 2d 993 (Fla. 4th DCA 1998) (holding that Petitioner was entitled to a hearing on his motion to dissolve within five days of the application for hearing as required by Rule 1.610(d)).

B. LEGAL DUTY OF THE TRIAL COURT TO PERFORM THE REQUESTED ACTION

The Supreme Court of Florida is vested with the power to adopt rules for the practice and procedure in all courts. Fla. Const. Art. V, §2(a). The circuit court has an indisputable legal duty to comply with the rules of civil procedure. See Jimenez v. State, 201 So.3d 214, 217 (Fla. 2d DCA 2016) (holding that the trial court has an indisputable legal duty to comply with the rules of *criminal* procedure). Just as the court found in Jimenez that the trial court must comply with the rules of criminal procedure, so too must the circuit court comply with the rules of civil procedure. Fla. R. Civ. P. 1.610(d) is a mandatory rule. The court's failure to schedule a hearing on Petitioner's motion to dissolve within five (5) days of its filing of a motion to dissolve and an application for hearing contravenes the court's duty to comply with the rules of civil procedure.

C. NO OTHER ADEQUATE REMEDY AVAILABLE

Petitioner is without any other legal remedy to ensure its motion is heard. Petitioner seeks to dissolve a wrongfully issued temporary restraining order that is impeding it from conducting its business and exercising its legal rights. Petitioner has repeated its request for a hearing within five (5) days of its application innumerous times to Judge Ruiz's chambers to no avail. The next available date the Judge's chamber has offered to the parties for a hearing and to which counsel for SVES have

agreed to is April 25, 2024. This is well after the five (5) days determined by Fla. R. Civ. P 1.610(d) for a hearing on a Motion to Dissolve and infringes Petitioner's rights to due process as Petitioner remains enjoined from conducting acts necessary to its business operations without a chance to be heard.

VI. CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner, ShipJoy, LLC, respectfully requests that this Honorable Court grant this petition and issue a writ of *mandamus* compelling the Honorable Judge Ruiz of the Court of the Eleventh Judicial District in and for Miami-Dade County, Florida to schedule a hearing on Petitioner's Motion to Dissolve the Temporary Injunction within five (5) days of Petitioner's application for a hearing on its Motion to Dissolve filed April 8, 2024 and grant any additional relief this Court deems just and proper.

Dated: April 11, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April 2024, the foregoing was filed with the Clerk of Court via the E-portal and, in compliance with Fla. R. Gen. Prac. & Jud. Admin. 2.516, a true and correct copy of the foregoing was served on the parties via electronic mail to the following addresses:

For Respondents SVES, LLC, SVES GO, LLC, SVES SWISS, LLC, and SVES APPAREL, LLC:

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Roxana Perez-Rodriguez, Judicial Assistant

/s/ Shanshan Liang
Shanshan Liang, Esq.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing petition was prepared in Arial, 14-point font, and is otherwise in compliance with the Florida Rules of Appellate Procedure 9.045(b), 9.100(e) and (g) and 9.210.

/s/ Shanshan Liang
Shanshan Liang, Esq.