IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

MONIER RAHALL,
Appellant,
vs.

INXS VI, LLC, a Florida limited liability company,
Appellees.

Case No. 2D23-103

**APPEAL FROM THE**

**CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA, CIVIL DIVISION**

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# *INITIAL BRIEF*

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Jawdet I. Rubaii and
Jawdet I. Rubaii, P.A.
Attorney for Appellants
1358 S. Missouri Avenue
Clearwater, FL 33756
(727) 442-3800
FBN - 276601

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## STATEMENT OF JURISDICTION FOR APPEAL

This is an appeal of the 12/20/22 Order of Temporary Preliminary Injunction (Doc. 10; R.3) and it is directly appealable pursuant to Fla.R.App.P. 9.130(a)(3)(B) which provides for the immediate appeal of an order granting injunction. There are only three documents relative to this Appeal: the 12/17/22 Verified Complaint, the 12/19/22 Emergency *Ex Parte* Injunction, and the 12/20/22 Order of Temporary Preliminary Injunction.

## STATEMENT OF CASE AND PROCEEDINGS

This is an appeal of an *ex parte* **Order of Temporary Preliminary Injunction** (Doc. 10; R.3) entered in favor of Plaintiffs and against Defendant/Appellant, Monier Rahall. The Complaint that was filed was a one-count Verified Complaint for Injunctive Relief (Doc. 5; R.9) filed 12/17/22 (the Saturday before Christmas week). It did not identify any emergency situation or any need for an immediate *ex parte* emergency injunction. It did not contain an action for accounting, declaratory relief, trespass, or any specific cause of action. The only other pleading filed was the Verified Emergency Motion for Ex Parte Temporary Injunction filed 12/20/22 (Monday) (Doc. 6; R. 21).

The Complaint alleged that an "oral agreement"[1] was made allegedly between Monier Rahall and Jamie Rand for "certain management services."

It did not identify when the verbal agreement was made, nor did it identify any terms of the oral management agreement nor any other specifics. The Complaint (Doc.5; R.9) stated that it was for management of 74 residential rental properties which it described as a Portfolio. (The lack of any actual property management agreement in writing for 74 rental properties and the lack of any specificity as to the alleged management relationship between Plaintiff/Appellee and Defendant/Appellant, Monier Rahall, should have caused immediate denial of the *ex parte* emergency injunction without notice.) There were also no specific terms of any specific lease on any of the 74 properties, nor of the management agreement "terms" or any details or specifics as to the 74 rental properties or the tenants.

The lack of any specificity over the alleged verbal management agreement[1] with no terms, no time that it was made, and no specifics about any specific piece of rental property or any specific terms is stunning and not credible. The Complaint (Doc.5; R.9) stated that it was "verified," but there was no affirmative statement as to any personal knowledge and no specific statement about any specific piece of rental property or its condition, nor any basis for *ex parte* emergency injunction relief without notice. Also, there were

[1] Appellant denies any management agreement and believes this was a fraud on the Court.

no specific facts as to an emergency or the security deposits that were supposedly held, nor rent that was paid for any specific rental property, or any other specific matter other than identifying 3 eviction proceedings (which was clearly not an emergency) and not a basis for an *ex parte* emergency injunction with no notice.

The Plaintiff's Complaint was filed on a Saturday, 12/17/22 (Doc.5; R.9). A **Verified Emergency Motion for Ex Parte Temporary Injunction** was filed on Monday, 12/19/22 (Doc. 6; R. 21) which appears intended to create an *ex parte* emergency injunction order during the Christmas holidays so that it could not be addressed or a hearing held before Defendant/Appellant was in violation of the *ex parte* **Order of Temporary Preliminary Injunction** created by Plaintiff on 12/20/22 (Doc. 10; R.3) which ordered immediate mandatory compliance for some provisions and within five (5) days for many provisions/directives. (See Order of Temporary Preliminary Injunction) (Doc. 6; R. 21 ruling on 4 and 5).

There was no allegation in the 12/17/22 Complaint (Doc.5; R.9) of an immediate and irreparable injury or loss to the Movant before the adverse party could be heard, as required by Fla.R.Civ.P. 1.610(a)(1)(A):

> (A) It appear from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party

> can be heard in opposition; and

Fla.R.Civ.P. 1.610(a)(1)(A) (Emphasis added)

The 12/19/22 Emergency *ex parte* Motion (Doc. 6; R. 21) did not have a certification by the attorney that complied with Fla.R.Civ.P. 1.610(a)(1)(B) which states:

> ...and
> (B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

Also, the Order of Temporary Preliminary Injunction (Doc. 10; R.3) was entered on 12/20/22 by the **Verified Emergency Motion for Ex Parte Temporary Injunction** (Doc. 6; R. 21) and the *ex parte* motion for *ex parte* temporary injunction both created and expanded injunction relief that was never requested in the initial 12/17/22 Complaint (Doc.5; R.9) by Plaintiff and what amounted to a ruling for Plaintiff on the merits of Plaintiffs' Complaint and other relief *ex parte* with no notice. The 12/20/22 Order of Temporary Preliminary Injunction (Doc. 10; R.3) ordered and compelled the following:

> 2. From the date of the entry of this Order and until further order of this Court, the Defendants, MONIER RAHALL, MIDDLETOWN PROPERTY MANAGEMENT, LLC, and LANGEE REALTY, INC., are **ENJOINED** from:
>
> a. Prosecuting or defending any lawsuits related to the Portfolio Properties, regardless of whether they are captioned in

their name(s) or in any of the Owner entity names, without prior review and approval by this Court.

b. Trespassing onto the Portfolio Properties;

c. Communication with the Tenants;

d. Collecting rent monies from Tenants, including for January 2023; and

e. Wrongfully holding Tenant security deposits or other property that should be in possession of the Owner.

3. It is further **ORDERED** that within five (5) days of this Order, the Defendants MONIER RAHALL, MIDDLETOWN PROPERTY MANAGEMENT, LLC, and LANGEE REALTY, INC.:

f. Turn over all Tenant security deposits to Plaintiffs' counsel at 403 N. Howard Avenue, Tampa, Florida 33606;

g. Turn over all keys to the Portfolio Properties to Plaintiffs' counsel at 403 N. Howard Avenue, Tampa, Florida 33606;

h. Turn over all other property to the Owner, including, but not limited to leases, correspondence, and documents to Plaintiffs' counsel at 403 N. Howard Avenue, Tampa, Florida 33606;

i. Refrain from destroying, or causing to be destroyed, any and all information and documents that are relevant to the Portfolio Properties and tenants, including, but not limited to any documents, things or any other type of electronically stored information (ESI); and

j. Provide an accounting of all monies collected by Defendants, including Tenant security deposits, to Plaintiff's counsel at 403 N. Howard Avenue, Tampa, Florida 33606.

12/20/22 Order of Temporary Preliminary Injunction, pgs. 5 – 6. (Doc. 6; R. 21)

The Emergency *ex parte* Order of Temporary Preliminary Injunction (Doc. 10; R.3) ordered discovery from Defendants and ordered a complete accounting and for all rental deposits of tenants to be paid over to the

Plaintiffs without identifying any specific rental deposit or rental agreement with any specific renter or specific residential property. There was no compliance with Rule 1.610(a)(1)(A) and (B) by Plaintiff as to an **immediate and irreparable damage to plaintiff before defendant could be heard to oppose the motion for preliminary injunction (*ex parte* with no notice!).**

The emergency *ex parte* emergency motion that was filed was completely vague and seems to suggest that the Plaintiffs knew that there was an "ownership claim" by Defendants such that there was a dispute over ownership of the 74 properties. However, this matter was left out (by intention) from the 12/17/22 Verified Complaint (Doc.5; R.9) and left out of the Emergency ex parte Motion (Doc. 6; R. 21) in order to make it appear that the matter was completely uncontested (undisputed) when in fact the matter was completely contested and disputed with the real goal of Plaintiffs of denying the Defendants' due process and the right to be heard in Court as to Plaintiffs' unsupported allegations before entry of an "Order of Temporary Preliminary Injunction." (Doc. 10; R.3)

The Complaint (Doc.5; R.9) alleged that the communication of a termination in a letter of December 9, 2022, however, that letter mentioned nothing about an emergency injunction hearing and does not explain why the Plaintiffs waited until just before Christmas, a Saturday, 12/17/22 and

Monday 12/19/22 to seek an ex parte emergency injunction with no notice when there was ample time to file the Complaint and relief in November or December of 2022 and to set the matter for hearing with proper notice if the goal was due process and to maintain the status quo (but that was not what was intended. This Plaintiff had no written management agreement and no clear right to any relief, much less an *ex parte* emergency injunction with no notice). There were no specific facts to support any of the mandatory directives for an emergency injunction *ex parte* with no notice.

The **Order of Temporary Preliminary Injunction** signed by the Court the next day on Tuesday 12/20/22 also did not comply with Fla.R.Civ.P. 1.610(a)(2) as it did not state the reason that the ex parte Order of Temporary Preliminary Injunction was entered without any notice whatsoever to Defendants. Also, no specific facts from personal knowledge were set forth in support for each of the required elements for the *ex parte* injunction with no notice.

There was no Affidavit from personal knowledge and no specific facts in support of the *ex parte* Emergency Motion and no specific facts provided to support as required by Rule 1.610(a)(1)(A) There are comments in the emergency motion about tenant communications with the Defendants, but no tenant is identified and no specific communication is identified. Moreover,

there is no explanation of how Jamie Rand would or did have any personal knowledge of any communications between a tenant and the Defendant, Monier Rahall, nor any specific knowledge as to any of the 74 residential rental properties. (The tenants, communications, leases, tenant deposits, or property conditions).

There is no support or assertion of any personal knowledge by Jamie Rand as to any specific rental property or any specific tenant or any specific fact. Just as there is no specific information about any deposits or any specific keys, or any trespass or disparagement. The "generic" verification by Mr. Rand is to the "best of his information and belief" with no indication as to his personal knowledge or or competency as to any of the grounds for the injunction or facts.

The dispute also appears to be entirely about "money" that would be the subject of an accounting or an action for damages not an emergency temporary *ex parte* restraining order with no notice. There are no specific facts as to any of the 74 properties being either uninsured or suffering from any damage or failure to repair or keep the rental properties in good condition. In fact, no one who has knowledge of the 74 rental properties has filed an affidavit or any specific facts showing immediate and irreparable harm before Defendant can be heard in opposition as required by Rule

1.610. (There literally was no emergency at all on 12/19/22 and no affidavit with specific facts to show any immediate and irreparable harm and injury to Plaintiffs before the Defendant can be heard in opposition as required by Rule 1.610.) There is no irreparable harm established and definite adequate legal remedies available, and no clear legal right has been established and no immediate and irreparable harm.

The 12/20/22 **Order of Temporary Preliminary Injunction** (Doc. 10; R.3) was entered by the Court on Tuesday, 12/20/22, and drafted obviously by Plaintiff's counsel obtained discovery orders and requests that violate the discovery rule and ordered a complete accounting which would have been the subject of a separate Count in the lawsuit and also ordered the surrendered the order of keys and deposits with no specificity to be done immediately. The Temporary Injunction Order of 12/20/22 was a *de facto ex parte* (no notice) ruling on the merits of Plaintiff's Complaint in violation of Second District Court of Appeal law. See ***Gulf Coast Commercial, LLC v. KOS Corp., 351 So.2d 1212 (Fla. 2d DCA 2022)***.

At no time did the Plaintiffs aver that they could not visit the 74 rental properties or speak to any tenants, nor were any affidavits provided as to this subject by tenants or even persons speaking with the tenants. There was no evidentiary support or specific facts of irreparable harm to the portfolio

properties (74 properties) or any emergency.

The lack of any written management contract for 74 rental properties is absolutely striking and not believable. Written management agreements for rental properties with extensive terms are entered into when even one (1) rental house is being managed. The claim of a vague "verbal communication" with no specifics for 74 rental properties over multiple counties defies credulity. The Complaint reveals there is much more to the dispute and involving an ownership dispute which Plaintiff has deliberately hidden from the lower court as to the 74 portfolio properties so as to create a non-existent emergency without the Circuit Court knowing the actual dispute and Plaintiff's failure to join indispensable parties.

The 12/17/22 Complaint (Doc.5; R.9) appears to stress the existence of "deeds." However, the dispute does not address the specific relationship between the Defendants and the tenants and also does not identify with any specificity the exact relationship between the Plaintiffs and the Defendants. The Appellant Monier Rahall asserts that the emergency *ex parte* injunction obtained by the Plaintiff was in violation of Fla. R. Civ.P. 1.610 and due process and established case law prohibiting the entry of an *ex parte* emergency injunction with no notice and with no immediate and irreparable damage that will occur before defendant can be heard. See Rule 1.610.

(There was a complete lack of Attorney Certification as to the mandatory certification required under Rule 1.610(a)(1)(B) and lack of "reasons why the order was granted by the Court without notice" by the Court in the 12/20/22 Order of Temporary Preliminary Injunction (Doc. 10; R.3) which also violates Rule 1.610(a)(1)(2) which requires this in the "Injunction Order."

In addition, there are no **specific facts** that have been identified that would support the issuance of an *ex parte* emergency injunction showing **immediate and irreparable** harm to Plaintiffs that will occur before Defendant can be heard in opposition Rule 1.610 requires *specific facts* or a verified motion, Rule 1.610(a)(1)(A). However, the 12/19/22 verified emergency motion (Doc. 6; R. 21) and 12/17/22 Complaint (Doc.5; R.9) in this case has no specifics (specific facts) and does not establish any personal knowledge or competency as to the specific facts that have been alleged vaguely, but not specifically. Moreover, "possible harm" based only on pure conjecture, is not a valid basis for an emergency *ex parte* injunction with no notice.

There is no indication of any specific tenant deposits that Plaintiff/Appellant is holding for any specific tenant. In any event, the tenants were not joined, and ordering their deposits to Plaintiffs without their inclusion is not possible or reasonable, nor does it comport with due process. Second,

there is no identification of any reason why all communications with the tenants by the Defendant must cease and no legal basis for such an order (see Order). First, there is an absolute right of freedom of association. Second, there is no specific allegation of any communication with specificity that has injured or affected the Plaintiffs. Third and finally, there is an injunction entered against trespass to Defendants. However, there is no establishment that Defendant possess the 74 properties. Contrary, to what is alleged they are possessed by tenants without identifying the lease, tenant or interference (possession and the right to enjoin trespass is held by those tenants, not Plaintiffs).

Also, the relief obtained in the 12/19/22 *ex parte* emergency Motion for Emergency Injunction (Doc. 6; R. 21) and Order of Preliminary Injunction (Doc. 10; R.3) is far more expansive than the initial Verified Complaint for Injunction (Doc.5; R.9) and concerns matters that amount to a ruling on the merits as to the Plaintiff's Complaint (without a hearing or due process) for Injunction and not just an "order" to maintain the status quo until a hearing can be held. (See Injunction terms and directives granting all of Plaintiffs' request for relief and more!).

Finally, there is no showing of **immediate and irreparable harm** or any lack of remedy at law. All of the matters are matters set forth that are

dealt with that involve money or money claims. There was no specific allegation of destruction of communications or email records. The ex parte emergency injunction was the creation of a "wish list" for improper *ex parte* no hearing emergency relief so that Plaintiff could win on the merits of their Complaint (Doc.5; R.9) before the Defendants were even allowed to be heard in Court; and, relief ordered far exceeded any reasonable bounds for an *ex parte* emergency temporary injunction to maintain the status quo. The relief ordered was as through the case had been tried and concluded *ex parte* with no hearing with no notice and no due process (and because of the Christmas holiday week, no ability to even retain attorneys or obtain hearing times during this critical time period).

The deliberate timing by Plaintiffs of a non-emergency to create an *alleged* emergency just before Christmas holidays when it could have been filed well before Christmas week with a noticed hearing shows a strategy to impermissibly obtain an improper *ex parte* injunction without notice so the Defendants could not defend the "failure to certify" by the Plaintiff's attorney in the Motion (Doc. 6; R. 21) and in the Order of Temporary Preliminary Injunction (Doc. 10; R.3) the reason for lack of notice requires reversal. (See Fla.R.Civ.P. 1.610(a)(1)(B) and 1.610(a)(2)).

The 12/17/22 Verified Complaint for Injunction (Doc.5; R.9) alleged that

it involved "approximately" 74 real estate properties in paragraph 17 that are single family residence homes and that most of the properties are occupied by residential tenants pursuant to various leases. None of the leases are attached to the Complaint or referred to. Other than alleging a vague verbal agreement to manage and stating that "certain property management services" would be undertaken by Rahall, there is no specific explanation or documentation or management agreement as to any specific relationship, and no leases, no records of tenants deposits and no explanation of the exact management agreement (dates, terms, specifics).

There is no specific residential rental property mentioned with respect to paragraph 35, nor any indications of attempts to inspect rental properties or to perform any repairs, nor any request to do so. Rand provides no personal knowledge or personal statements to repair any rental property or be denied entrance to any rental property.

Plaintiff's *incredibly* claim the loss of "quiet enjoyment" for 74 residential rental properties they do not reside or possess (quiet enjoyment is for tenants)! There are also blanket unsupported statements such as "untold potential legal liability" with no explanation as to what it means or where it came from or the basis for it. There are no specific damages or specific injury identified and the injunction appears to seek an order preventing defendants

from going on residential properties controlled and possessed by the tenants (not joined nor specifically mentioned) but there is no specific evidence that this has occurred or will occur. There is mention of "harassment" of residential tenants with no tenant statements, affidavits, averments or evidence of harassment, nor is there any specific evidence of any damage or any immediate and irreparable harm that is occurring or will occur. In short, the Verified Complaint (Doc.5; R.9) does not support an *ex parte* emergency injunction or set forth any specific immediate and irreparable harm facts that require the drastic *ex parte* emergency injunction relief without notice.

## SUMMARY OF THE ARGUMENT

The Plaintiffs filed a 12/17/22 Verified Complaint for Injunction (Doc.5; R.9). The Plaintiffs then filed an 12/19/22 Emergency Motion (Doc. 6; R. 21) based on the Emergency Motion. The Court entered the Plaintiffs' 12/20/22 Order on Temporary Preliminary Injunction (Doc. 10; R.3). The Emergency Motion for *Ex Parte* Injunction did not comply with the requirements of Rule 1.610. There was no proper certification by the attorney. The Order entered by the Court granting injunction also did not comply with Rule 1.610. It did not recite the reasons why notice was not given. The Emergency Motion for *Ex Parte* Injunction did not meet the requirements for an injunction and the Order entered did not meet the requirements for immediate and irreparable

injury before Defendant could be heard. There are no specific facts to support the preliminary injunction and the preliminary injunction entered an order on the merits of the Complaint and not to maintain the status quo. The Court Order also does not recite facts to support each of the requirements for an injunction. The injunction *ex parte* without notice should have been denied and must be reversed.

## I. THE TEMPORARY INJUNCTION DID NOT PROVIDE SPECIFIC FACTS THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS, OR DAMAGE WILL RESULT OT THE MOVANT BEFORE THE ADVERSE PARTY CAN BE HEARD IN OPPOSITION

Rule 1.610(a)(1)(A) states very clearly that specific facts must be shown by affidavit that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition and then goes on to state that the movant's attorney must certify in writing any efforts that have been made to give notice and why notice should not be given.

In this case, there are absolutely no specific facts of immediate and irreparable injury that will result before the adverse party can be heard in opposition.

The Plaintiffs/Movants "attempt" to create hypothetical future possible facts (conjecture) with absolutely no specific factual support. There are no specific facts as to any specific rental property where the Defendant has a deposit and the matter cannot be addressed at a later hearing. There are no

specific communications being made with tenants that will cause an immediate and irreparable harm before movant can be heard in opposition. Rent deposits by their very nature are monetary and are between the tenant and the holder. What is the emergency on this issue?

The determination of whether tenant deposits from a tenant should be held by the Defendants or by the Plaintiffs are strictly a monetary matter and not a matter of immediate and irreparable injury. Moreover, the duplicate keys and leases and correspondence are definitely not a matter for immediate and irreparable harm. An accounting of all monies collected to Plaintiff's counsel within 5 days of the 12/20/22 **Order of Temporary Preliminary Injunction** (Doc. 10; R.3) is not the subject of an emergency injunction or immediate and irreparable harm but rather a direct violation of the discovery rules and of the rule prohibiting an *ex parte* temporary injunction to rule on the merits of the Complaint and maintaining the status quo.

This 12/19/22 *ex parte* **Order of Temporary Preliminary Injunction** (Doc. 10; R.3) was an impermissible a ruling on the merits of the Plaintiff's Complaint in direct violation to the Second District Court of Appeal precedent that prohibits the entry of an order amounts to a ruling on the merits to Plaintiff's Complaint. Here, everything that was sought, none of it was an

immediate irreparable emergency and none of it involves immediate and irreparable emergency that will cause injury to Plaintiffs that could not be addressed after a hearing or with money damages.

As will be shown there was no certification by counsel and no specific reasons by the court as to why the order was granted without notice to Defendants. ***Lewis v. Sunbelt Rentals, Inc., 949 So.2d 1114, 1115 (Fla. 2d DCA 2007)***. The requirement that damage will result before the party plaintiffs can be heard does not allow "speculation" for which there is no specific evidence or facts. Not one fact was adduced as to any specific damage to any specific rental property of the 74 properties. The conclusions of law of irreparable harm and no adequate remedy at at law are not supported by any specific facts and there is no showing that the Emergency Motion meets the requirements of 1.610 (a)(1)(A). It does not.

## II. THE PLAINTIFF'S MOTION DID NOT CERTIFY AS REQUIRED ATTEMPTS TO GIVE NOTICE OF THE EMERGENCY MOTION HEARING

The Fla.R.Civ.P. 1.610 (a)(1)(B) specifically require a certification by the attorney set forth in the Emergency Motion with respect to notice.

The case law by the Second District Court of Appeal and other courts also require this certification. The Complaint in its general allegations states in paragraph 24 that the owner verbally terminated Rahall and Middletown

Delaware on or about November 8, 2022. The Complaint in paragraph 25 further states that Rahall ignored the termination and continued to act as tenants and others as the property manager or even the owner of the portfolio properties. There is no affidavit from any tenant or any person in privity with any conversation to substantiate this claim. There are no specific properties mentioned that this took place at and the verification is only by Rand to the best of his knowledge and belief in paragraph 50 of the Complaint.

At no time is there any verification of any specific facts personally known by Rand or any affiant. In fact, many of the allegations of harm are completely hypothetical and there is no emergency or exigent circumstances alleged. None of the paragraphs had any specific addresses that are dealt with, nor is there a written management agreement or any evidence of actual harm. The injunctive relief sought in paragraph 10 is to stop trespassing and harassing and threatening tenants, filing lawsuits or collecting rent monies and with respect to security deposits with tenants. However, there is absolutely no specificity as to what security deposits are being held, how much they are, what addresses they are for and specifically no tenants that are being contracted. There is no immediate and irreparable harm specific facts set forth before the Defendant could be heard in opposition. (Therefore,

under Fla.R.Civ.P. 1.610(a)(1)(A) and (B) the *ex parte* motion for emergency temporary injunction without notice could not be sought or entered.)

The Plaintiff reserved the right to amend or file additional actions in paragraph 61, but the Complaint clearly alleges nothing that could constitute immediate and irreparable harm or an action for accounting. The Complaint was filed on Saturday, 12/17/22. The emergency motion titled **Verified Emergency Motion for Ex Parte Injunction** was filed on Monday, 12/19/22. The Temporary Injunction Order was entered the next day on 12/20/22 on Tuesday with no notice.

At the end in paragraph 75 of the Verified Emergency Motion for Ex Parte Temporary Injunction, the attorney certification which is provided on page 13 and 14 does not meet the requirements by Rule 1.610 which requires in 1.610(a)(1)(B):

> (B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

Instead, the "certification" talks about civil theft notices and an email termination notice and a civil theft notice and nothing about what efforts were made to given notice to Monier Rahall, despite Mr. Rand having both the cell phone number and email for Monier Rahall. **This was a deliberate violation**

**of Rule 1.610(a)(1)(B)** to obtain an ex parte injunction with no notice and without certifying as required by rule and controlling case law. ***Lewis v. Sunbelt Rentals, Inc., 949 So.2d 1114, 1115 (Fla. 2d DCA 2007)***

Pursuant to established case law, this alone requires reversal of the **Order of Temporary Preliminary Injunction** entered 12/20/22 (Doc. 10; R.3) which also does not comply with Rule 1.610(a)(2):

> ...and shall define the injury, state findings by the court why the injury may be irreparable, and give the reasons why the order was granted without notice if notice was not given. The temporary injunction shall remain in effect until the further order of the court.

The **Order of Temporary Preliminary Injunction** 12/20/22 (Doc. 10; R.3) was silent as to what findings were immediate and irreparable and why it was granted without notice at all. There was nothing exigent contained in the Temporary Injunction Order. There was no emergency trespass over 74 parcels of property. There was no emergency communication with any specific tenant that needed to be enjoined. The rent monies for January 2023 were not even due and were strictly a monetary issue that could be resolved without an injunction that holding of security deposits was definitely not an emergency matte, the handing over of leases correspondence and documents to Plaintiff's counsel and security deposits and keys was not an

emergency and there was absolutely no evidence of destroying any information or documents nor any allegation of this occurring in the Complaint. The claim for an accounting was a discovery matter and on the merits of Plaintiff's Complaint that had no exigency to it whatsoever and was requested in the Complaint, as was the other discovery order entered *ex parte* with 5 days to comply, nor no time to obtaining a hearing within the 5 days.

## III. THE TEMPORARY INJUNCTION ORDER ENTERED BY THE COURT DID NOT SET FORTH THE REASONS WHY NOTICE WAS NOT GIVEN AND THE ATTEMPTS TO GIVE NOTICE PRIOR TO ENTRY

The Fla.R.Civ.P. 1.610(a)(2) states as follows:

> (2) No evidence other than the affidavit or verified pleading shall be used to support the application for aa temporary injunction unless the adverse party appears at the hearing or has received reasonable notice of the hearing. Every temporary injunction granted without notice shall be endorsed with the date and hour of entry and shall be filed forthwith in the clerk's office and shall define the injury, state findings by the court why the injury may be irreparable, and **give the reason why the order was granted without notice if notice was not given**. The temporary injunction shall remain in effect until the further order of the court.

Fla.R.Civ.P. 1.610(a)(2) (Emphasis added)

In ***City of Boca Raton v. Boca Raton Airport Authority, 768 So.2d 1191 (Fla. 4th DCA 2000***), the Appellate Court reversed the grant of an ex parte injunction without notice, and stated as follows:

> A temporary injunction is "an extraordinary remedy" that should be "granted sparingly." *Beeler,* 530 So.2d at 933. "Ex parte orders are antithetical to precious due process rights." *Smith v. Knight,* 679 So.2d 359, 361 (Fla. 4th DCA 1996). There must be a " 'strong and clear' showing before a temporary injunction without notice may issue." *Id.* at 361 (quoting *Beeler,* 530 So.2d at 934). A trial court should issue an ex parte injunction only where there exists "an immediate threat of irreparable injury 'which forecloses opportunity to give reasonable notice.' " *Beeler,* 530 So.2d at 934 (quoting *Lieberman v. Marshall,* 236 So.2d 120, 125 (Fla.1970)). As we observed in *Smith.*

***City of Boca Raton*** at 1192, 1193.

The Court went on to state:

> The allegations of the verified motion were insufficient to justify the issuance of the ex parte order. The pleadings discussed potential injury **only in generalities, not the "specific facts"** required by Florida Rule of Civil Procedure 1.610(a)(1)(A). As it observes in its initial brief, the City was not an elusive party which was difficult to contact; there is no reason that the City Attorney could not have been notified by telephone of an expedited hearing. The Authority did not demonstrate how a short delay in setting a hearing would have permitted a threatened irreparable injury to occur.

***City of Boca Raton*** at 1193. (Emphasis added)

In ***Bookall v. Sunbelt Rentals, Inc., 995 So.2d 1116 (Fla. 4th DCA 2008),*** the Court specifically reversed the order or injunction stating

> ... However, the injunction suffered from a fatal defect; the injunction failed to give the reasons why the order was granted without notice." *See* Fla. R. Civ. P. 1.610(a)(2).
>
> Florida Rule of Civil Procedure 1.610 allows for the issuance of

> an *ex parte* temporary injunction without notice provided certain prerequisites are met. Although the court's order sets forth findings of irreparable harm, it fails to explicitly state reasons why the order was granted without notice. *See Lewis v. Sunbelt Rentals, Inc.,* 949 So.2d 1114, 1115 (Fla. 2d DCA 2007). This omission renders the order invalid under the plain reading of rule 1.610(a)(2).

***Bookall*** at 1117, 1118.

In ***Lewis v. Sunbelt Rentals, Inc., 949 So.2d 1114, 1115 (Fla. 2d DCA 2007)***, the Second District Court of Appeal made it clear that an attorney certification was required under the Rule and the Certification had to be provided or the injunction would be reversed.

In the present case, both the attorney certification as required by the Rule and the Court Order findings as to lack of notice and reasons for lack of notice and efforts to give notice are lacking and are not in compliance with the plain language of Rule 1.610 and the clear case law requiring compliance. ***Lewis v. Sunbelt, 949 So.2d 1114 (Fla. 2d DCA 2007)***

In ***McKeegan v. Ernst, 84 So.3d 1229 (Fla. 4th DCA 2012)***, the Court reversed an injunction as:

> "... is facially deficient because it failed to include sufficient factual findings to support each prong of the four-part injunction test."

***McKeegan*** at 1230.

The Court stressed that there had to be

> "...clear, definite, and unequivocally sufficient factual findings

> supporting each of the required elements before entering an injunction." *Id.* (citation omitted. "[A] trial court reversibly errs when an order fails to make "specific findings" for each of the elements."

***McKeegan*** at 1230.

In addition, the Court stated

> Additionally, appellant argues and we agree that her due process right to notice and an opportunity to be heard were violated because appellees did not meet their heavy burden to establish that notice was not required.
>
> The ex parte temporary injunction failed to meet the requirements of Florida Rule of Civil Procedure 1.610(a). Appellees' attorney did not certify in writing any efforts made to give notice or any reasons whey notice should not be required. Fla. R. Civ. P. 1.610(a)(1)(B). *Fla. High Sch. Activities Ass'n., Inc. v. Benitez,* 748 So.2d 358 (Fla. 5th DCA 1999) (attorney did not certify in writing any efforts made to give notice and notice by facsimile only one hour before injunction was granted was insufficient). Rule 1.610(a)(2) also requires the court to "give the reasons why the order was granted was insufficient). Rule 1.610(a)(2) also requires the court to "give the reasons why the order was granted without notice if notice was not given," which the trial court did not do. *See Bookall v. Sunbelt Rentals, Inc.,* 995 So.2d 1116 (Fla. 4th DCA 2008) (order failing to explicitly state reasons why the order was granted without notice requires reversal even though movant met its burden of establishing the elements for entry of an injunction for these additional reasons we reverse the order granting the ex parte temporary injunction.

***McKeegan*** at 1230, 1231.

In this case, there were no specific facts averred to, nor any facts recited to be with personal knowledge of Jamie Rand. There was no date given for when a management agreement occurred, nor an of the terms

identified or set forth at all. There was no person who averred they even *spoke* to a tenant, much less what a specific tenant said or did not say. There was no identification of any specific rental property that was suffering loss or damage, nor any specific act of trespass. There was no indication that Mr. Rand knew anything about the 74 rental properties in the portfolio or any of the tenants or any deposits or rental deposits.

There is only "generalized" statements about a hypothetical loss of rents that would occur if an "injunction" was not entered which is strictly a monetary matter and could be handled by a damages action or other forms of relief, certainly not a proper *ex parte* emergency injunction without notice that goes far beyond any attempt to maintain a status quo or to address any emergency at all. The purpose of the injunction appears to be to create a Preliminary Injunction Order at Christmas time that required immediate compliance and there was no court for Defendants to go to because it was closed and, therefore, create an order of contempt before the Defendants could be heard on any matter and also to obtain a full accounting and all records and payment before any opportunity to be heard or defended could exist.

The generalized statements in the emergency *ex parte* Motion (Doc. 6; R. 21) are not supported by specific facts as required by Rule 1.610 and

established case law. See ***McKeegan v. Ernst,*** *supra.*

## IV. THERE WERE NO AFFIDAVITS AND KNOWLEDGE AS TO SPECIFIC FACTS THAT SUPPORT EX PARTE INJUNCTIVE RELIEF

There were no affidavits (upon personal knowledge) provided in support of the Complaint or the emergency *ex parte* Emergency Motion for Injunction. The ex parte emergency motion had a verification signed by Mr. Rand. However, that verification did not confirm any personal knowledge, nor did it set forth any specific facts that would support an immediate and irreparable harm that will result before the Defendant could be heard in opposition.

There were no specific rental properties mentioned, nor any specific terms of any specific management agreement or terms and no written management agreement. There were no facts to support immediate and irreparable harm before the Defendant could be heard in opposition (nor of a lack of legal remedies).

In the case of ***Shouman v. American Express Travel Related Svcs. Co., Inc., 566 So.2d 875 (Fla. 3rd DCA 1990),*** the court reversed an ex parte injunction where the matter was well known to the Plaintiff seeking the injunction. But the Plaintiff waited months to seek the relief. There was an emergency created by the Plaintiff's delay in seeking the injunction. Here, the Plaintiff admits to sending out civil theft notices and to making

communication with the Defendant where the claims were denied. Yet, there is a deliberate refusal to provide any notice to the Defendant of injunction hearing. Nor any showing of immediate and irreparable harm before Defendant can be heard. The Court stated:

> A temporary injunction without notice is an extraordinary remedy and should be granted sparingly. *State v. Beeler,* 530 So.2d 932 (Fla.1988). Further, the facts, by affidavit or verified pleadings, must show an immediate and irreparable injury, loss, or damage to movant, before a temporary injunction without notice may be granted. Fla.R.Civ.P. 1.610(a)(1). Additionally, the rule is that in a complaint seeking a temporary injunction without notice, the complaint must allege facts showing why and how the giving of notice will precipitate or accelerate the injury. *Dixie Music Co. v. Pike,* 135 Fla. 671, 185 So. 441 (1938); *Bell v. All Persons Claiming Any Estate, Right, Title, or Interest in, or Lien upon Real Property,* 198 So.2d 35 (Fla. 3d DCA), *cert. denied,* 201 So.2d 894 (Fla.1967).

***Shouman*** at 876. (Emphasis added)

## V. THERE WAS NO SHOWING OF IMMEDIATE AND IRREPARABLE HARM BY THE PLAINTIFF BEFORE DEFENDANT CAN BE HEARD.

There was no showing of any immediate and irreparable harm by the Plaintiff. The Complaint for Injunction is completely silent as to any emergency, but the emergency ex parte motion which expands on all the relief sought in the 12/17/22 Complaint (Doc.5; R.9) tries to create an emergency over matters that are simply not an emergency and were not part

of the Complaint. First, there is no showing of anything that is going to occur immediately. There is a discussion of possible future rental income for the month of January. There is no identification as to the amount of money or any identification of the rent that is going to be collected from each specific rental property, nor any reason there is no adequate legal remedy or why the matter was not properly set for hearing and filed well before the Christmas holidays.

It is not believable that Jamie Rand owns 74 rental properties, and does not have a signed lease or written management agreement and doesn't know what tenants pay in rent? Nor the exact amount that is owed? Nor is it believable that he does not know what tenant deposits were collected and nothing is in writing with the Defendants? Nor is there any explanation as to how long he has had the 74 properties which he claims to not be in possession of and not have even one specific fact!

There is no Count in the Complaint for accounting, nor is there a cause of action for trespass. There is no contractual basis or agreement with any tenant that would have paid a deposit or the amount of the tenant's deposit that was being held by the Defendant and for which property and for whom.

There are no specific claims as to any of the 74 properties that are damaged or suffering disrepair or are uninsured. Yet, there is a need for an

emergency injunction (without notice) *ex parte* to the Appellant Defendant, but no explanation as to why.

Under the Plaintiff's motion for *ex parte* emergency injunction 12/19/22 (Doc. 6; R. 21), no notice there would no longer be a need for a discovery request or an action for accounting. Every Plaintiff could make up an emergency injunction *ex parte* and have the Defendants ordered to immediately comply and within 5 days to obtain everything and anything the Plaintiffs want or assert is an emergency with no evidence to support any of it. (See Order of Temporary Preliminary Injunction, Doc. 6; R. 21) Plus, it's not believable, and it's also not believable that the owner of 74 rental properties does not have a single written lease, written management agreement, proof of any deposits, and information from any tenant to support the claims made in the Complaint and the *ex parte* Emergency Motion. There was no specific proof of any legal right to an injunction, much less an *ex parte* emergency injunction with no notice.

The Court in ***Hiles v. Auto Bahn Federation, Inc., 498 So.2d 997 (Fla. 4th DCA 1986),*** established in reversing a temporary injunction stated as follows

> First, appellees failed to specifically allege irreparable harm – appellees merely suggest the possible dissipation of assets from a corporate bank account. Furthermore, appellees

> failed to prove that such dissipation is irreparable harm. Injunctive relief may not be used to enforce money damages, or to prevent any party from disposing of assets until an action at law for an alleged debt can be concluded. *Action Electric & Repair, Inc. v. Batelli,* 416 So.2d 888 (Fla. 4th DCA 1982). Consequently, this alleged loss of money from a corporate bank account does not constitute irreparable harm because the loss can be compensated for by money damages, *Action Electric,* 416 So.2d at 889; *Goldberger v. Regency Highland Condominium Association,* 383 So.2d 1173 (Fla. 4th DCA 1980); and an action at law for the alleged debt in the instant case has not yet been concluded. *Action Electric,* 416 So.2d at 889. Without a showing of irreparable injury, the granting of an injunction is inherently an abuse of discretion meriting reversal. *Florida East Coast Railway v. City of Miami,* 299 So.2d 152 (Fla. 3d DCA 1974), *cert. denied.* 304 So.2d 126 (Fla.1974).
>
> ***Hiles*** at 998, 999.

The case law is clear that the relief that was being sought in the present case was not in the nature of irreparable harm or a lack of relief pursuant to a cause of action for damages. The Plaintiffs have tried to wrongfully convert an ordinary case into the extraordinary relief for injunctive relief, claiming irreparable harm when all they were actually seeking was monetary damages and ordinary discovery that would be sought in any ordinary legal action at law.

## VI. THE EMERGENCY INJUNCTION ORDER EXCEEDED THE COMPLAINT AND AMOUNTED TO A RULING ON THE MERITS OF THE PLAINTIFF'S COMPLAINT AND NOT AN ORDER TO MAINTAIN THE STATUS QUO PENDING A HEARING

There is no question that the emergency injunction order exceeded the Complaint and amounted to a ruling on the merits of the case which is

impermissible. The Second District Court of Appeal in the case of ***Gulf Coast Commercial, LLC v. KOS Corp., 351 So.2d 1212 (Fla. 2d DCA 2022)*** reversed a temporary injunction, stating that it is an extraordinary remedy:

> "[A] temporary injunction is an extraordinary remedy that can only be granted if the movant establishes (1) a likelihood of irreparable harm, (2) unavailability of an adequate legal remedy, (3) substantial likelihood of succeeding on the merits, and (4) support for the injunction within the considerations of public interest." *Phantom of Clearwater, Inc. v. Pinellas County,* 894 So.2d 1011, 1014 (Fla. 2d DCA 2005).
>
> The general function of a temporary injunction is to preserve the status quo for disputing parties until the court is able to resolve the underlying dispute on its merits." *Coscia v. Old Fla. Plantation, Ltd.,* 828 So. 2d 488, 490 (Fla. 2d DCA 2002) (citing *State Agency for Health Care Admin. V. Cont'l Car Serv., Inc.,* 650 So.2d 173 (Fla. 2d DCA 1995)). The status quo is "the last, actual, peaceable, noncontested condition which preceded the pending controversy."
>
> * * *
>
> ... A preliminary injunction is improperly entered when it bypasses the procedures for a permanent injunction and preliminarily grants the same relief that would have been given in a final Order of permanent injunction." *Nazia,* 275 So. 3d at 706 (quoting *Charlotte County v. Vetter,* 863 So.2d 465, 469 (Fla. 2d DCA 2004)); *see also LaRose v. A.K.,* 32 So. 3d 77, 78 (Fla. 2d DCA 2009)

*Gulf Coast Commercial, LLC* at 1215.

There is no question that the *ex parte* emergency injunction was a ruling on the merits on all of Plaintiff's claims without a hearing in violation of established case law as set forth by the Second District Court of Appeal in

***Gulf Coast***, *supra.*

## VII. THERE WAS NO IRREPARABLE HARM EXISTING AND AMPLE REMEDIES BY DAMAGES OR ILLEGAL ACTION

The case law is clear that a damages claim cannot be replaced by injunctive relief because there is no irreparable harm. In ***Hiles v. Auto Bahn Federation, Inc., 498 So.2d 997 (Fla. 4th DCA 1986)***, the Appellate Court reversed an injunction related to a bank account sum because the matter was one that could be resolved with money damages. The ***Hiles*** case has been cited again in ***Sammie Investments, LLC v. Strategica Capital Associates, Inc., 247 So.3d 596 (Fla. 3rd DCA 2018)***:

> Strategica has failed to meet its burden of proving that it will incur irreparable harm because it has no adequate remedy at law. As defined by this Court, "irreparable injury is injury that cannot be cured by money damages." Lutsky v. Schoenwetter, 172 So.3d 534, 534 (Fla. 3d DCA 2015) (citing Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP, 137 So.3d 1081, 1092 (Fla. 3d DCA 2014) ). And, "[t]he test for unavailability of an adequate remedy at law, under these requirements, is 'whether a judgment can be obtained, not whether, once obtained, it will be collectible.' " Lopez-Ortiz v. Centrust Sav. Bank, 645 So.2d 1126, 1127 (Fla. 3d DCA 1989) (citations omitted).
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> * * *
>
> ("Injunctive relief may not be used to enforce money damages, or to prevent any party from disposing of assets until an action at law for an alleged debt can be concluded." Quoting Hiles v. Auto Bahn Federation, Inc., 498 So.2d 997, 998 (Fla. 4th DCA 1986) ).

*Sammie Investments, LLC* at 600, 601.

## VIII. THERE WAS NO CLEAR SHOWING OF A MANAGEMENT CONTRACT BETWEEN ANY OF THE PLAINTIFFS AND THE DEFENDANTS AND MONIER RAHALL (PERSONALLY) AND NO SHOWING OF ITS TERMS AND NO SHOWING OF SPECIFIC INFORMATION

The Plaintiffs attempt to create a (false) picture for the Court without any affidavit of specific facts to support that picture that has been created with literally no support for evidence. First, there is absolutely no evidence of any waste or diminution in value in any of the 74 rental properties. Second, there is no specific evidence of trespass on the part of the Defendants. Third, there is no specific evidence of specific rental deposits held for tenants for which the Plaintiffs have any right to receive or take. There is no evidence of destruction of records or documents. Nor is there any evidence of any violation of quiet enjoyment (which is the Lessee's not Plaintiffs) or any evidence that the Plaintiffs have possession of any of the properties (so as to have quiet enjoyment!). Nor is there evidence of Defendants' actions to interfere with quiet enjoyment. Finally, there is no evidence of any communication or interference by Defendants and tenants as there is no evidence of any conduct between the tenants in the 74 rental properties and the Defendants. The evidence of a "management agreement" consists only

of a vague "verbal communication" regarding "certain matters" with no supporting documents and no specifics. (Plaintiff is simply creating a ruse to obtain an illegal injunction.) There is no written rental leases. Also, no evidence was set forth as to specific rent being received from specific properties or any emergency on 12/19/22 or prior to the *ex parte* emergency injunction. This injunction was obtained *ex parte* with no notice and with no evidence of anything that could possibly be considered the basis for an extraordinary "Order of Temporary Preliminary Injunction" with no hearing.

## CONCLUSION

This emergency *ex parte* Order of Preliminary Injunction (without notice) (Doc. 10; R.3) was obtained in direct violation to Rule 1.610(a)(1)(A) and (B) and 1.610(a)(1)(2) and controlling case law. The Plaintiff's attorney did not certify as required under Rule 1.610(a)(1)(B) and the **Order of Temporary Preliminary Injunction** did not recite the reasons for lack of notice as required by Rule 1.610.(a)(1)(2) The established case law requires reversal on both of these grounds. ***Lewis v. Sunbelt Rentals, Inc., 949 So.2d 1114, 1115 (Fla. 2d DCA 2007).*** Also, the Temporary Injunction Order was a ruling on the merits of the 12/17/22 Verified Complaint (Doc.5; R.9) and this was an impermissible 12/20/22 Order of Preliminary Injunction (Doc.

10; R.3) as set forth in controlling Second District Court of Appeal law, ***Gulf Coast Commercial, LLC v. KOS Corp., 351 So.2d 1212 (Fla. 2d DCA 2022)***.

Finally, there was no affidavit from personal knowledge setting forth any specific facts that could support an *ex parte* temporary emergency injunction with no notice. The verification by Jamie Rand (alone) was only a general averment that showed no personal knowledge or specific knowledge as to any matter concerning the injunction and Motion for Emergency Injunction. The allegation of a vague verbal communication (no specifics as to terms, dates of entry or specific properties), with no written management agreement as to 74 properties through multiple counties that are being rented with no specifics as to the management agreement or to any matters concerning the immediate and irreparable harm that will result is also fatally defective to the injunction, much less an *ex parte* emergency injunction. There was no specific facts to support the elements of an injunction. Also, there is only a claim for possible monetary relief and discovery, none of which constitutes immediate and irreparable harm and there is clearly a remedy in an action at law but not for *ex parte* emergency injunctive relief with no notice or hearing and no compliance with Rule 1.610. The timing of this action

during the Christmas holiday, 12/17/22, the lack of specificity, the lack of personal knowledge and the lack of a written management agreement, coupled with the kind of relief sought established that this temporary order of injunction *ex parte* should not have been entered or entertained. The 12/20/22 Order of Temporary Preliminary Injunction (Doc. 10; R.3) entered *ex parte* with no notice and in violation of the Rule 1.610 and controlling and established case law must be reversed.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument has been furnished through the eDCA Portal to Tracy S. Carlin, Esq., Brannock, Berman & Seider, 637 Summit Drive, Buffalo, WY 82834-1438 (tcarlin@bbsappeals.com) on this 2nd day of November 2023.

**JAWDET I. RUBAII, P.A.**

/s/ Jawdet I. Rubaii, Esq.
Jawdet I. Rubaii
Attorney for Appellant
1358 South Missouri Avenue
Clearwater, FL 33756
(727) 442-3800/Fax (727) 442-0504
SPN - 116744/FBN – 276601
rubaiilaw@gmail.com
jrubaii@aol.com

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the brief complies with the font requirements of Fla.R.App.P. 9.210(a)(2).

*/s/ Jawdet I. Rubaii*