

Hand-Delivered

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

FILED
ASHEVILLE, N.C.

JUN 12 2017

U.S. DISTRICT COURT
W. DIST. OF N.C.

GREGORY G. ARMENTO,
Plaintiff, Pro Se,

vs.

ASHEVILLE BUNCOMBE COMMUNITY
CHRISTIAN MINISTRY, INC., et al.,
Defendants.

Civil Action No. 1:17-cv-150

PLAINTIFF'S
MOTION FOR INJUNCTIVE RELIEF

Now comes the Plaintiff, Gregory G. Armento ("Plaintiff", or "Armento"), proceeding Pro Se and in the form of a pauper, moves the Court for issuance of a Preliminary Injunction pursuant to Federal Rules of Civil Procedure 65, and, FLSA U.S.C. 29 § 217 - Injunction proceedings, enjoining and restraining Asheville Buncombe Community Christian Ministry, Inc. ("Defendant" or "ABCCM") from actions as set forth herein.

1. The Plaintiff now moves the Court to enter an Preliminary Injunction to preserve the status quo by:
 - a. Order a Preliminary Injunction barring the Defendant from expelling the Plaintiff into homelessness; and
 - b. Order the Defendant to place the Plaintiff into safekeeping, and explain to the Court the specific actions the Defendant will take to protect Plaintiff until such time the allegations in Plaintiff's Complaint are fully adjudged.

2. Plaintiff will likely prevail on the merits of the claims alleged in the Complaint; the Plaintiff has submitted a **Memorandum in Support of Injunctive Relief** and therein Plaintiff presents a prima facie case regarding Count I, Count II, and Count III of **Plaintiff's Complaint**.
3. If the relief presently sought is not granted, the Defendant will be permitted to expel the Plaintiff into homelessness:
 - a. due to a superior position of authority and control over the Plaintiff; and,
 - b. because the Plaintiff is not protected under any tenants rights; and,
 - c. because the Plaintiff is dependent on the homeless Veteran benefits provided by the Defendant; and,the Plaintiff will suffer immediate and irreparable harm for which he will not have an adequate remedy at law.

PARTIES

4. The Plaintiff is a citizen of the United States, an honorably discharged U.S. Army Veteran, and at all times material hereto, the Plaintiff did and continues to be temporarily housed in a homeless shelter for Veteran's in Buncombe County, North Carolina. The Plaintiff's last state residence was in Orlando, Florida. **(Plaintiff's Affidavit in Support of Complaint, at 2, 4, 5)**
5. Asheville Buncombe Community Christian Ministry, Inc. ("Defendant" or "ABCCM") is a Charitable and Religious, non-profit corporation, and incorporated under the laws of North Carolina, and is owned and operated by Christian congregations of Buncombe County (including their pastor affiliates) who are members of same organization, **(Exhibit 28 - ABCCM Bylaws and Artiles; at Article I, Corporation Name &**

Ownership, Section 1, Section 2, Section 3), and under the direction of the ABCCM Board of Directors at all times relevant, and are collectively referred to as “Defendant”; and same is headquartered at 20 Twentieth Street, Asheville, NC 28806 (formerly headquartered at, 30 Cumberland Avenue, Asheville North Carolina 28801); and at all times material engaged in business in North Carolina. **(Plaintiff’s Complaint, at 4-5)**

6. Additionally, the Defendant’s business interests are multi-faceted, whereas several businesses are registered with the North Carolina Secretary of State, and share the entity name “Asheville Buncombe Community Christian Ministry” or “ABCCM”, and/or, has the same officer or Registered Agent name “Scott Rogers”, and/or, is identified by a business address that is known to be operating in the business interest of the Defendant **(Plaintiff’s Complaint, at 6)**. Plaintiff is without the benefit of pre-trial Discovery and it is unknown as to what extent same businesses have benefited from the actions in the Complaint.

BACKGROUND

7. The Defendant is the owner and operator of two homeless shelters in Asheville, North Carolina; the Veterans Restoration Quarters (VRQ) for men, **(Id. at 12)** and the Stcadfast House (SFH) for women and children; both homeless shelters provide homeless services for homeless Veterans and homeless civilians.
8. The Veterans Restoration Quarters has a business address and is located at 1329 Tunnel Road, Asheville, NC 28805. **(Ibid.)**
9. The VRQ is a converted Super 8 motel comprised of 124 rooms with 246 beds, providing homeless services to variably 226 veterans and 20 non-veterans who sleep in six-man, four-man, three-man, two-man, and one-man occupancy rooms **(Plaintiff’s Affidavit in Support of Complaint, at 52, 57)**.

10. The Defendant is an authorized provider of U.S. Department of Veteran Affairs (VA) Homeless Providers Grant and Per Diem (GPD) Program, a federal program benefiting homeless Veterans. **(Plaintiff's Memorandum in Support of Injunctive Relief, page 3)**
11. The Defendant's primary source of operating income is from the Per Diem component of the VA GPD program. **(Exhibit 30 - ABCCM Consolidated Audit 2015, page 30)**
12. The Defendant is paid by the VA for each night the Plaintiff resides overnight in the Defendant's VRQ shelter. **(Plaintiff's Memorandum in Support of Injunctive Relief, page 3; and, Exhibit 31 - VA GPD Homeless Providers Per Diem Payment Voucher)**
13. The Defendant has regulatory restrictions, fiduciary responsibilities, and benefactor duties that extend from the VA GPD program, such as but not limited to, providing life-sustaining benefits to U.S. Veterans through its operation and administration of the VRQ homeless shelter. **(Plaintiff's Memorandum in Support of Injunctive Relief, pages 3-4)**
14. The Plaintiff is a homeless Veteran, living at the VRQ, a participant and beneficiary of the VA GPD program as operated and administered by the Defendant. The Plaintiff is dependent on the Defendant for shelter, food, safety and other necessities. **(Plaintiff's Affidavit in Support of Complaint, at 15-16, 93, 111, 114).**
15. The issues in controversy arise from two employee/employer relationships of the parties; the first relationship is by virtue of the Plaintiff being a participant in a VA GPD program designed by the Defendant.
16. As a authorized provider of the VA GPD program, the Defendant holds a unique position of authority and control over the Plaintiff, which includes but is not limited to, a monthly review of the Plaintiff's personal savings account, room assignment, room changes, roommate assignments and re-assignments, available in-room amenities, overnight passes, off-campus curfew times, safety, security, disciplining, and other non-work related

requirements and restrictions. Additional control over the Plaintiff includes admission into and expulsion from the VRQ into homelessness, and termination of the Plaintiff's current VA GPD benefit. (**Plaintiff's Memorandum in Support of Injunctive Relief; II. Statement of Facts; C. Nature of Controversy; page 5**)

17. **Plaintiff's Complaint, Count I** alleges that the Defendant acts under the pretense of its self-designed VA GPD program, the Defendant uses its position of superior authority and control to require the Plaintiff to perform a substantial number of labor hours known as "Service Hours", which are work activities that are necessary to the daily operation of the Defendant's business interests Manager (**Exhibit 01 - Service Hour Requirements**), and same Service Hours are unpaid, moreover, the Defendant continues to act in the same manner. Plaintiff alleges his compelled participation in the Service Hours program constitutes an employee/employer relationship and subject to employment law.
18. The second employee/employer relationship of the parties was formed when the Defendant formally hired and employed the Plaintiff as a paid ABCCM employee to perform work activities consistent with the duties of a VRQ Front Desk Manager (**Exhibit 07 - ABCCM VRQ Front Desk Manager Policy**).
19. **Plaintiff's Complaint, Count II** alleges that the Defendant acts under the pretense of its self-designed VA GPD program, and used its position of superior authority and control to require the Plaintiff to work Service Hours in his formal employee capacity as a Front Desk Manager before earning regular wages and overtime, and same Front Desk Manager Service Hours are unpaid.
20. **Plaintiff's Complaint, Count III** alleges the Defendant acted in a retaliatory manner and wrongfully terminating the Plaintiff for causing a member of Congress to inquire

regarding the Defendant's employment practices. An inquiry from U.S. Senator Thom Tillis's Constituent Advocacy Office reached the local VA Medical Center in Asheville who in turn contacted the Defendant (**Exhibit 18 - Letter from Senator Tillis May 10, 2016, enclosure VA BreyFogle**). The Defendant responded by retaliating against the Plaintiff. The Defendant attempted to terminate Plaintiff's employment, twice in April 2016; and ultimately terminated Plaintiff's employment on June 1, 2016.

21. Defendant's actions also give rise to violations of North Carolina Common Law, Tort Law, Public Policy, for claims of Duress, Undue Influence, Illegal Contracts; Intentional Infliction of Emotional Distress; and Violations of the Plaintiff's Constitutional Rights.

THIS MOTION IS BASED ON THE FOLLOWING GROUNDS:

22. The Plaintiff demonstrates to the Court by way of his pleadings and exhibits there is a prima facie case to be adjudicated on Count I, Count II, and Count III, and a substantial likelihood of success. (**Plaintiff's Memorandum in Support of Injunctive Relief**)
23. The Plaintiff attests to his good conduct while participating in the VA GPD program. (**Plaintiff's Affidavit in Support of Complaint, at 210-214**)
24. Also, in the Plaintiff sworn Affidavit in Support of Complaint he attests to instances of past and recent acts of retaliation and harassment by the Defendant. (**Id. 93-209**)
25. The Plaintiff seeks the Courts protection from expulsion, additional retaliation and harassment until such time a conclusion of law is determined on all issues.
26. It is reasonable and valid to assert that if expelled from the Veterans' Restoration Quarters, the Plaintiff will suffer immediate, permanent, and irreparable harm due to:
 - a) homelessness bears the threat of death or serious physical or psychological harm;
 - b) increased risk of suffering from street violence;

- c) lack of personal security while sleeping;
- d) reduced access to health care;
- e) reduced access to preparing and storing food;
- f) loss of ability to obtain and keep personal and essential contacts without a permanent location or mailing address;
- g) loss of clothing and possessions;
- h) loss of means to pursue disputed issues in the Complaint before a final determination of all claims;

for which the Plaintiff will have no adequate remedy at law.

27. Given the facts, there is no undue burden placed on the Defendant to grant the Plaintiff's requests as set forth in this Motion and **Plaintiff's Memorandum in Support of Injunctive Relief**.

WHEREFORE, the movant prays the Court to grant a Preliminary Injunction that places the Plaintiff into safekeeping, and require the Defendant to explain to the Court the specific action they will take to protect Plaintiff from further harm.

Movant also prays that Preliminary Injunction security be waived, whereas the Defendant is currently paid a Per Diem to provide homeless Veteran benefits to the Plaintiff and same request preserves the status quo.

By this Motion, Plaintiff prays the Court:

1. Order the Defendant to place the Plaintiff into safekeeping, and explain to the Court the specific actions the Defendant will take to protect Plaintiff until such time the claims in Plaintiff's Complaint are fully adjudged.
2. Order the Defendant and its employees, agents, all under Defendant's control and authority,

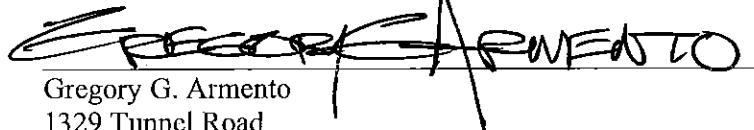
or anyone acting in concert with Defendant from further acts of retaliation and harassment.

3. Plaintiff requests the Court to Order the Plaintiff exempt from performing Service Hours; whereas Service Hours are at the heart of the labor disputes.
4. The Plaintiff prays the Court to conduct a review of the Plaintiffs' living conditions and well-being within thirty (30) days after a Preliminary Injunction.

In the interest of Justice, and given the merits of the prima facie case before the Court, and in view of the Plaintiff showing no undue burden is placed on the Defendant.

Respectfully submitted this day of

JUN 12, 2017

A handwritten signature in black ink, appearing to read "GREGORY ARMENTO", written over a horizontal line.

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