

CAUSE NO. 09-09868

MAELSTROM PROPERTIES, LLC,
HILTON HEAD FINANCE, LLC, and
HILTON HEAD PROPERTIES, INC.

Plaintiffs,

v.

MICHAEL R. DAVIS

Defendant.

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IN THE DISTRICT COURT

101 JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

TEMPORARY RESTRAINING ORDER

On this day came on to be heard the application of Plaintiffs Maelstrom Properties, LLC (“Maelstrom”), Hilton Head Finance, LLC (“Hilton Head Finance”) and Hilton Head Properties, Inc. (“Hilton Head Properties”) (collectively “Plaintiffs”) for a temporary restraining order, requesting that the Court grant *ex parte* injunctive relief against Defendant Michael R. Davis (“Davis”). The Court, having considered Plaintiffs’ verified original petition and applications for temporary restraining order, temporary injunction and permanent injunction, and the arguments presented to the Court, enters the following findings and orders:

1. Maelstrom is a real estate investment company which primarily does real estate investments in Houston and Dallas, Texas, with its principal office located in Dallas. Maelstrom is owned 90% by William Payne and 10% by Hilton Head Properties. Hilton Head Finance is a mortgage management company and is a wholly owned subsidiary of Hilton Head Properties, with its principal office located in Dallas. “Chase” Douglas Fonteno (“Fonteno”) is the President of Hilton Head Properties and Hilton Head Finance, and the Vice President of Maelstrom.

2. Davis has never been an employee, shareholder, executive or any control party of either Hilton Head Finance or Maelstrom. However, Davis was employed in late 2008 and early 2009 as an executive for Sterling Partners, LLC (“Sterling”), which has a business relationship

with both Hilton Head Finance and Maelstrom. In late 2008 and early 2009, Davis also performed some contract work for Hilton Head Properties, which allowed him during that time to have access to sensitive internal information of Maelstrom, Hilton Head Finance, Hilton Head Properties and Fonteno, including bank account numbers, tax ID numbers and much more. Further, Davis had an online sign-on to Chase Bank to access his personal accounts and the Sterling accounts.

3. Davis ceased working for Sterling and from performing any contract work for Hilton Head Properties and handling any deposits for Maelstrom in around mid-May 2009.

4. On or about February 11, 2009, without any knowledge of or authorization from the officers, directors or shareholders of Maelstrom, Davis falsely represent to Chase Bank that he was the “owner” of Maelstrom and thereafter applied and sign up for a revolving line of credit for a credit card in Maelstrom’s name. Unbeknownst to Maelstrom, from February 2009 to June 2009, Davis used and spent on this line of credit up to almost the maximum credit limit of \$9,000.00, all for his own personal benefit. Davis concealed his actions for months, and it was not until June 2009 that Davis’s actions were discovered, after Davis no longer worked for Sterling or Hilton Head Properties.

5. When Davis ceased his employment with Sterling and ceased performing contract work for Hilton Head Properties in mid-May 2009, Davis’s responsibilities with the companies were terminated, including but not limited to any responsibilities with regard to making deposits, accounting or other actions on the companies’ bank accounts.

6. However, despite the fact that his employment and responsibilities have been terminated for more than two months, Davis continues to use online bank account access to access bank accounts belonging to Hilton Head Finance, Hilton Head Properties or Maelstrom.

7. In addition, on or about June 18, 2009, Davis accessed Hilton Head Finance's bank account online, without any authorization to do so, and transferred funds in the amount of \$388.00 to an account not owned, managed or controlled by Hilton Head Finance, Hilton Head Properties or Maelstrom.

8. When Plaintiffs first learned of Davis's improper access, they changed the passwords to on the accounts and met with Chase Bank officials numerous times in an attempt to prevent Davis from gaining online access to the accounts. However, Plaintiffs' efforts were in vain, as Davis's knowledge of sensitive account, tax ID and other information of Plaintiffs and Plaintiffs' Executives allows him to get around the bank's security and Davis continues to access such accounts.

9. The Court finds that Davis is likely to continue to improperly access Plaintiffs' bank accounts, and possibly transfer money to himself or others.

10. The Court also finds that Plaintiffs have been injured by Davis's action and, without the issuance of this Order, will continue to suffer immediate and irreparable injury, loss, or damage if Davis's conduct described above is not enjoined.

11. The Court also finds that Plaintiffs have demonstrated a likelihood of success of prevailing on the merits with respect to their claims against Davis in this lawsuit.

12. The Court also finds that Plaintiffs do not have an adequate remedy at law because monetary damages alone will not sufficiently redress Plaintiffs' injuries and losses.

13. The Court also finds that the injury to Plaintiffs if Davis continues the conduct described above would outweigh any injury the restraining order and injunction might cause Davis, and issuance of the restraining order and injunction would not disserve the public interest.

It is therefore ORDERED that Davis and all persons in active concert or participation with him are immediately restrained from directly or indirectly:

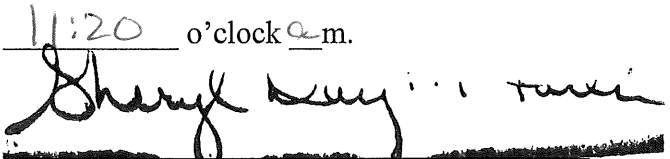
- a. Accessing, whether through online internet access or otherwise, any bank account, whether at Chase Bank or elsewhere, that is held in the name of Maelstrom Properties, LLC, Hilton Head Finance, LLC, Hilton Head Properties, Inc. or any of their officers, directors, employees or agents; and
- b. Using Plaintiffs' names or any of Plaintiffs' or Plaintiffs' officers', directors', employees', agents', or customers' personal and sensitive information, including but not limited to bank account numbers, credit card numbers, login and password information, tax ID's, social security numbers, and any other sensitive information, to apply for loans, credit cards, credit lines, bank accounts or other financial accounts (such as bank, savings, securities, investment or debt accounts) or to enter into any other agreement (such as contracts, leases, purchases, or sales) that would or could obligate or appear to obligate Plaintiffs financially.

It is further ORDERED that this Order shall become effective on the condition that Plaintiffs post a bond in the sum of \$ 100,00, properly conditioned and securing the payment of such damages not to exceed said sum as may be suffered or sustained by any party who is found to have been wrongfully restrained.

It is further ORDERED that a hearing on Plaintiffs' application for temporary injunction will be held before this Court on the 19th day of August, 2009 at 4:00 o'clock Pm, unless continued by Order of the Court. Davis is hereby put on notice that failure to attend the hearing shall result in immediate issuance of a temporary injunction, which shall be deemed to take effect immediately upon the expiration or dissolution of this Order, and shall extend during the pendency of this action the same injunctive relief previously granted by this Order.

This Order shall expire on the 20th day of August, 2009 at 12:00 o'clock am.

Signed on this 6 day of August, 2009 at 11:20 o'clock am.


JUDGE PRESIDING