

**IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

FRIENDS FOR OUR RIVERFRONT, INC.;
VIRGINIA O. MCLEAN;
ELIZABETH O. SNOWDEN; and
MARY KATHRYN BOYD;

Petitioners,

v.

**No. CH-23-1108
Part I**

THE CITY OF MEMPHIS, TENNESSEE; and
MEMPHIS BROOKS MUSEUM OF ART, INC.,

Respondents.

ORDER DENYING PETITIONERS' REQUEST FOR TEMPORARY INJUNCTION

THIS CAUSE came to be heard before the Honorable Melanie Taylor Jefferson, Chancellor of Part I of the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis on September 20, 2023, upon the Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction of Petitioners Friends for our Riverfront, Inc., Virginia O. McLean, Elizabeth O. Snowden, and Mary Kathryn Boyd (collectively "Petitioners") set forth in the original Complaint ("Original Complaint") first filed with this court on August 22, 2023 and restated in the First Amended Complaint filed September 8, 2023 ("First Amended Complaint"). This Court granted Petitioners' request for a temporary restraining order ("TRO") on August 30, 2023 upon entry of a Fiat, which set the September 20, 2023 hearing, and, importantly, set the bond to be posted by Petitioners at one million dollars (\$1,000,000) (the "Bond"). As of the entry of this order, Petitioners have failed to post the bond set by this Court.

For this reason, this Court has no choice but to **DENY** Petitioners' request to convert the TRO into a Temporary Injunction.

I. Findings of Fact

1. Petitioners filed their original Complaint and Petition for Declaratory Judgment, Specific Performance, Slander of Title, Civil Conspiracy, Temporary Restraining Order, Temporary and Permanent Injunction. ("Original Complaint") with this court on August 22, 2023.

2. A blank Fiat was attached to the Original Complaint requesting that the Court set a hearing on Petitioners' request for a temporary injunction.

3. On August 30, 2023, this Court issued a Fiat, which stated:

The Court directs the clerk to issue a Temporary Restraining Order, restraining the Respondents from directly or indirectly taking any action in furtherance of the construction of the Brooks museum building in downtown including but not limited to removal of any dirt, any excavation work or any other action that would further disturb the land until such time as this Court can hear a request for Temporary Injunction. Erosion control is acceptable. The Court will set the hearing for Temporary Injunction Sept 20, 2023 at 10:00 a.m. and **sets the bond to be posted by the Petitioners at \$1 million.**

4. On September 8, 2023, Petitioners filed their First Amended Complaint restating their request for Temporary Restraining Order, Temporary and Permanent Injunction.

5. On September 19, 2023, Petitioners filed their Brief in Support of Request for Temporary Injunction.

6. Respondents Memphis Brooks Museum of Art, Inc. and the City of Memphis, Tennessee (collectively "Respondents") had previously filed their briefs

opposing Petitioners' request for injunctive relief on August 29, 2023 and September 18, 2023 respectively.

7. On September 20, 2023, the Court held a hearing regarding Petitioners' request to convert the TRO into a temporary injunction.

8. Petitioners were represented by Attorneys Edward M. Bearman, Stacy L. Greenway, and James M. Allen. Respondent City of Memphis was represented at the hearing by Attorneys Bruce A. McMullen and Pete A. Brunson. Respondent Brooks Museum of Art, Inc. was represented at the hearing by Attorneys Jef Feibelman, Jennifer S. Hagerman, and Sarah E. Stuart.

9. Upon hearing the arguments of counsel for the parties, testimony from each parties' witnesses, and other considerations in the record, the Court took the matter under advisement.

10. In both their pleadings and filings and at oral argument, Petitioners urged the Court to waive the bond requirement set forth by Tennessee Rule of Civil Procedure 65 or, alternatively, set a nominal bond.

11. Respondents requested a bond of approximately five million dollars (\$5,000,000) to account for the damages it stood to incur should it be restricted or enjoined from proceeding with construction.

12. In the interim since this Court issued the Fiat setting the Bond in this case, held the hearing, and took the matter under advisement, Petitioners have never posted the Bond as ordered.

II. Conclusions of Law

In Tennessee, requests for a temporary injunction are brought pursuant to Tenn. R. Civ. P. 65. However, “no restraining order or temporary injunction shall be granted except upon the giving of a bond by the applicant.” Tenn. R. Civ. P. 65.05. The plain language of the rule establishes that a bond is required as a condition precedent to the issuance of a restraining order or preliminary injunction in order to provide a mechanism for an enjoined party for harm it suffers as a result of the injunctive relief. S. Cent. Tennessee R.R. Auth. v. Harakas, 44 S.W.3d 912, 916 (Tenn. Ct. App. 2000). Rule 65.05(1) further states, in its entirety, as follows:

Except in such actions as may be brought on pauper's oath, no restraining order or temporary injunction shall be granted except upon the giving of a bond by the applicant, with surety in such sum as the court to whom the application is made deems proper, for the payment of such costs and damages as may be incurred or suffered by any person who is found to have been wrongfully restrained or enjoined. The address of the surety shall be shown on the bond.

With that framework in mind, the Court makes the following Conclusions of Law, to-wit:

13. Because Petitioners have failed to post the Bond set by this Court in the August 30, 2023 Fiat, a condition precedent set forth by TRCP 65.05 has not been met.

14. Accordingly, this Court must deny Petitioners’ request to convert the TRO into a Temporary Injunction.

15. In the Original Complaint, First Amended Complaint, and Petitioners’ Brief in Support, Petitioners argued this Court should either waive the bond requirement or set a nominal bond of approximately five thousand (\$5,000) to ten thousand (\$10,000) dollars in order to avoid the chilling effect of setting such a bond.

16. Petitioners cite no legal basis for the Court waiving the bond altogether absent a

pauper's oath, which was not sought in this case.

17. Conversely, Respondents requested that the Court set the bond between four million dollars (\$4,000,000) and six million dollars (\$6,000,000) based on the damages it would incur should it be restricted or enjoined from proceeding with construction.

18. The Court finds that Rule 65.05 is very clear in its mandate that no court grant a restraining order or temporary injunction except upon the giving of some bond by the applicant.

19. Additionally, the Court finds that Rule 65.05 mandates that the requisite bond be set at a sum the court deems proper "for the payment of such costs and damages as may be incurred or suffered" by the party being restricted or enjoined. Tenn. R. Civ. P. 65.05(1). The Court concludes that this is in direct conflict with Petitioners' request even for a nominal bond considering the tremendous costs and expenses alleged by Respondents, who would be enjoined or restricted in these proceedings.

20. The Court concludes that the one million dollar (\$1,000,000) bond set by this Court was both necessary and reasonable based on the mandates of Rule 65.05.

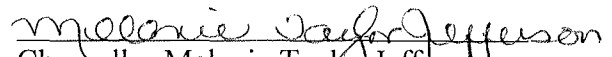
21. Petitioners' failure to post the Bond is fatal to their request.

22. Because Petitioners' failure to post the bond is dispositive in this case, the Court finds it unnecessary to address the arguments made by the parties for and against Petitioners' request for further injunctive relief.

As stated above, the Court finds that the Bond set by this Court was necessary and reasonable under the facts of this case. Petitioners' failure to post the bond is fatal to their request.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioners' request for temporary injunction is not well-taken and is hereby **DENIED**.

SO ORDERED.


Chancellor Melanie Taylor Jefferson
Part I

Date: June 28, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have delivered the foregoing Order Denying Petitioners' Request for Temporary Injunction via electronic mail and US mail postage prepaid on June 28, 2024 to all parties below:


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