EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Bruce Cassidy, Jr.,	)	Civil Action No.: 6:12-cv-02089-MGL
Plaintiff,	)	
vs.	)	**ORDER**
The Cliffs at High Carolina, LLC, The Cliffs Communities, Inc., James B. Anthony, Waterfall Investment Group, Longview Land Company II, LLC, Longview Land Company, LLC, and John Does 1 through 100,	)	
Defendants.	)	

This matter is before the court on Plaintiff's Emergency Motion for Appointment of a Receiver and for Temporary Restraining Order and Preliminary Injunction filed on July 26, 2012 and Amended Emergency Motion for Appointment of a Receiver and for Temporary Restraining Order and Preliminary Injunction. (ECF Nos. 3 & 12).

DISCUSSION

On July 25, 2012, Plaintiff Bruce Cassidy, Jr. brought suit against Defendants The Cliffs at High Carolina, LLC, The Cliffs Communities, Inc., James B. Anthony, and John Does 1 through 100 for breach of contract, breach of fiduciary duty, fraudulent transfers and seeking specific performance damages for injuries suffered by Plaintiff as a result of Defendants' actions. (ECF No. 1). Plaintiff further sought the request of the appointment of a receiver, the entry of a Temporary Restraining Order ("TRO") and a Preliminary Injunction. (ECF Nos. 1, 3 & 12). On July 31, 2012, Plaintiff amended his Verified Complaint against Defendants The Cliffs at High Carolina, LLC, The Cliffs Communities, Inc., James B. Anthony, and John Does 1 through 100, to add as parties

Defendants Waterfall Investment Group, Longview Land Company II, LLC, and Longview Land Company, LLC. (ECF No. 11). On August 1, 2012, this court held a hearing concerning Plaintiff's above-referenced motions.

At that hearing and on the record, Plaintiff, through counsel agreed to withdraw his request for a Preliminary Injunction and appointment of a receiver at this time because the defendants present reached an agreement concerning the entry of a TRO. Plaintiff also agreed to withdraw his request for a TRO, Preliminary Injunction, and appointment of a receiver as it relates to all other named Defendants except for Defendants The Cliffs at High Carolina, LLC, Longview Land Company, LLC, and Longview Land Company II, LLC.

Additionally, counsel for Defendants The Cliffs at High Carolina, LLC and Longview Land Company, LLC agreed to consent to a TRO that would restrain those defendants from conveying any property at or near The Cliffs at High Carolina other than in the ordinary course of business to third-party purchasers. Counsel for these defendants also agreed, on the record, to give opposing counsel notice of any intent to convey property in the ordinary course of business. Plaintiff and Defendants The Cliffs at High Carolina, LLC and Longview Land Company, LLC also agreed to allow a conveyance of the roads at The Cliffs at High Carolina and the gatehouse to the property owner's association.

Plaintiff's counsel represented to the court that Defendant Longview Land Company II, LLC was added to the action on August 31, 2012 by amended complaint, was in the process of being served, and would be notified of the existence of any order entered by the court granting injunctive relief. Longview Land Company II, LLC was not represented at the hearing and this court was asked to consider Plaintiff's request for *ex parte* injunctive relief as it related to Defendant Longview Land

Company II, LLC pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. Plaintiff sought to enjoin Longview Land Company II, LLC from conveying or transferring any property or other assets affiliated or associated with The Cliffs at High Carolina.

Rule 65 of the Federal Rules of Civil Procedure governs the issuances of injunctions and restraining orders. Specifically, Rule 65(b)(1) states: The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(l). Thus, the court may only grant a TRO which is issued "without written or oral notice to the adverse party," or a preliminary injunction, after notice to the adverse party, under strict conditions. Fed. R. Civ. P. 65. Both the TRO and preliminary injunctions are "extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances." *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001).

The substantive standards for granting a request for a temporary restraining order and entering a preliminary injunction are the same. *See, e.g., Virginia v. Kelly*, 29 F.3d 145, 147 (4th Cir.1994) (applying preliminary injunction standard to a request for temporary restraining order). In order for such injunctive relief to be granted, the movant must establish that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest." *Winter v.*

Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). All four requirements must be satisfied. *Real Truth About Obama, Inc. v. Federal Election Com'n*, 575 F.3d 342, 346 (4th Cir.2009), *vacated on other grounds* 130 S.Ct. 2371 (2010), *reinstated in relevant part on remand* 607 F.3d 355 (4th Cir.2010) (per curiam). As the Fourth Circuit has explained, the Supreme Court requires "that the plaintiff make a clear showing that it will likely succeed on the merits at trial." *Real Truth About Obama, Inc.*, 575 F.3d at 346 (citing *Winter*, 129 S.Ct. at 374, 376). Moreover, the movant must make a clear showing that it will likely suffer irreparable harm without a TRO. *Id.* at 347 (citing *Winter*, 129 S.Ct. at 374–76). Further, the Supreme Court in *Winter* emphasized the public interest requirement, i.e., requiring courts to " 'pay particular regard for the public consequences in employing the extraordinary remedy of injunction,' " *Winter*, 555 U.S. at 24 (quoting *Weinberger v. Romero–Barcelo*, 456 U.S. 305, 312, 102 S.Ct. 1798 (1982)).

Based on the record at this time, the court finds that Plaintiff has not clearly shown that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest. Plaintiff's amended complaint asserts that "on information and belief" Longview Land Company II, LLC is "among. . .the Anthony-Controlled Entities" and that "unlawful actions were undertaken directly by Defendants High Carolina, Cliffs Communities, Waterfall Investment Group, Longview Land Company II, LLC and Longview Land Company, LLC, and/or James Anthony and/or directly by, together with, vicariously by, or in concert with and with substantial assistance or encouragement from additional non-debtor John Doe entities or individuals. . ." (ECF No. 11, 3-4). As factual background in the complaint, Plaintiff asserted his belief that "Defendants have directed significant funds or other assets invested in and belonging to High Carolina away from

High Carolina and to other non-debtor Anthony-Control Entities that are controlled by Defendants Cliffs Communities and James B. Anthony, including without limitation Defendants Waterfall Investment Group, Longview Land Company II, LLC, and Longview Land Company LLC." *Id.* at 6-7. Plaintiff also asserts the belief, based on a supplemental asset purchase agreement, that Longview Land Company II, LLC is an "affiliate owner" of real property at the High Carolina development referenced in the supplemental asset purchase agreement[1] in the Proposed Plan of Reorganization associated with the transfer of real property to occur as part of the Debtor's Proposed Plan of Reorganization (subject to waiver). *Id.* at 8-9. Finally, Plaintiff asserts that according to the Debtor's Disclosure Statement, "[d]ebtors comingled business functions and commingled cash generated from operations, as well as had extensive intercompany payables with its non-debtor affiliates that are indirectly owned by The Cliffs Communities, Inc." *Id.* at 9.

To assume, without more, that Longview Land Company II, LLC and any entities which controls it, will transfer assets to a buyer as part of the proposed plan reorganization or otherwise is speculative at best, and Plaintiff failed to provide any evidence to support the proposition. *See Mike's Train House, Inc. v. Broadway Ltd. Imports, LLC*, 708 F.Supp.2d 527, 532 (D.Md.2010) (stating that "mere speculation about possible market share losses is insufficient evidence of irreparable harm."); *see, e.g., Z–Man Fishing Products, Inc. v. Renosky*, 790 F.Supp.2d 418, 423 (D.S.C.2011) (no proof of irreparable harm where party failed to establish "any evidence of lost goodwill, loss of market share, or price erosion."). In particular, there is no evidence in the record at this time and nothing brought to the attention of this court which would indicate that Longview

[1] This supplemental asset purchase agreement has not been made a part of the record and therefore could not be considered by this court.

Land Company II, LLC immediately threatens or intends to transfer asserts, finances, or land associated with The Cliffs at High Carolina. Plaintiff's contentions, at this time, are too speculative, to support a finding of irreparable harm. *See Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir.1992) (irreparable harm must not be speculative, but rather actual and imminent). Further, Plaintiff's allegation about past events or conduct made in the Complaint do not demonstrate that Plaintiff will suffer any immediate, irreparable harm in the absence of the requested relief. *See* Fed. R. Civ.P. 65(b)(l)(A).

The court also notes that Rule 65(b)(1)(B) requires that Plaintiff's counsel certify in writing what efforts were made to give notice of the request for a temporary restraining order to Longview Land Company II, LLC as well as to show why such notice should not be required. Even if the court assumes that sufficient facts have been alleged showing that immediate and irreparable injury will result without injunctive relief, Plaintiff's counsel has not certified in writing any efforts made to put Longview Land Company II, LLC on notice of the motion, nor has it offered any reason as to why such notice should not be required in satisfaction of the "stringent restrictions" of Rule 65(b)(1). *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda County*, 415 U.S. 423, 438–39 (1974) (citation omitted). The requirements of Rule 65(b)(1) are not mere technical niceties that a court may disregard, but rather crucial safeguards of due process. *Tchienkou v. Net Trust Mortg.*, No. 3:10–CV–00023, 2010 WL 2375882, at * 1, (W.D.Va. June 09, 2010) (citation omitted). While this court appreciates that Longview Land Company II, LLC was recently added to this action and that Plaintiff is swiftly attempting to make service upon that party, nothing in Plaintiff's motion satisfies this notice requirement. Therefore, this failure constitutes a separate and independent basis for denying the request for this *ex parte* injunctive relief at this

juncture.

CONCLUSION

Accordingly, Plaintiff's request for a temporary restraining order is DENIED without prejudice as it relates to Defendant Longview Land Company II, LLC.

This court accepts the consent agreement reached between Plaintiff Cassidy and Defendants The Cliffs at High Carolina LLC and Longview Land Company, LLC to restrain those defendants specifically from conveying any property at or near The Cliffs at High Carolina, other than in the ordinary course of business to third party purchasers, as stipulated by the parties. Defendants The Cliffs at High Carolina LLC and Longview Land Company, LLC are so restrained for a 14-day period beginning on August 1, 2012.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
August 2, 2012