

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	FIFTEENTH JUDICIAL CIRCUIT
)	
City of Myrtle Beach,)	CIVIL ACTION NO. 2019-CP-26-01732
)	
For Itself and a Class of Similarly)	
Situated Plaintiffs,)	
)	ORDER ON MOTION FOR STAY OF
Plaintiff,)	PRELIMINARY INJUNCTION OR
vs.)	SUPERSEDEAS PENDING APPEAL
)	
Horry County,)	
)	
Defendant.)	

This matter is before the Court on the July 12, 2019, motion of Defendant Horry County (“County”) for a stay or supersedeas of the Court’s June 21, 2019, and July 10, 2019, orders granting to Plaintiff City of Myrtle Beach (“City”), and all other similarly situated plaintiffs, which includes the other municipalities situated within Horry County,¹ a preliminary injunction against the collection of the County’s 1.5% uniform service charge under County Ordinance 105-96 (“Hospitality Fee”). This injunction applied within the City on June 21, 2019, and will apply within the other municipalities beginning August 10, 2019.

After having fully considered the matter,² the Court denies the County’s motion for stay or supersedeas. The Court concludes that the County has failed to establish any basis for relief under Rule 62(c), SCRPC, Rule 62(d), SCRPC, or Rule 241(c), SCACR.

¹ As this Court noted in the July 10, 2019 order denying reconsideration, these municipalities are the Town of Atlantic Beach, the Town of Aynor, the City of Conway, the Town of Loris, the City of North Myrtle Beach, and the Town of Surfside Beach, which are hereinafter referred to as the “Other Municipalities.”

² The Court has also considered the County’s July 16, 2019, memorandum in support of its motion and the supplemental affidavit of the County’s Finance Director, Barry A. Spivey asserting that in 2018, the County collected some \$28,290,302 in revenues generated by the 1.5% uniform service charge it imposed within the municipalities of Horry County, the collection of which is presently enjoined in the City and which will be enjoined on and after August 10, 2019, in the other municipalities. The Court does not require a response to this memorandum and

However, and as permitted by Rule 62(c), SCRPC, and based upon the County's further request and the City's subsequent invitation of same, the Court modifies its injunction to require that the City, which has adopted three ordinances dealing with the imposition of new local accommodations taxes and local hospitality taxes under S.C. Code Ann. §6-1-520 and S.C. Code Ann. §6-1-720, respectively, to escrow the new tax revenues collected under such ordinances to provide security to the County under Rule 65(c), SCRPC. The Court, in exercising its discretion as expressly permitted by Rule 65(c), finds that this escrow, along with the fact that the City possesses the authority to raise revenue via, *inter alia*, ad valorem taxes in the form of increases to millage rates, the imposition of other taxes or uniform service charges, or the issuance of bonds (*see, e.g.*, May 24, 2019 Affidavit of Michael W. Shelton), to cover any difference between the amount of the escrow and any costs and damages the County might incur or suffer in the event the Court's injunction is reversed on appeal, is a proper sum under Rule 65(c) and adequately protects the County.³

affidavit by the City for two reasons. First, the substance of the County's July 16 memorandum is essentially a request that the Court reconsider its determination to issue an order denying the County's motion, modifying the injunction to address the County's previously expressed concerns regarding security, and requiring mediation within 20 days. This the Court declines to do. Second the revenue figures asserted by Mr. Spivey, although inconsistent with his assertions in his first affidavit to the Court and revenue figures advanced by County Council in Resolution R-36-19 (Ex. A to City Memo in Opp. to County Mot. to Amend Answer), are consistent with the revenue figures asserted by the City's finance director, Michael W. Shelton, in his affidavit previously submitted in connection with the parties' motions for injunctive relief. Therefore, this provides the Court with no new information. Further, the Court notes that the County has repeatedly acknowledged that it has no current need to use the revenues it is enjoined from collecting by stating that, if its motion for injunctive relief were to be granted, it would "segregate" the funds derived from the continued imposition of its uniform service charge within the municipalities.

³ This Court's finding that the escrowing by the City of the new tax revenues collected under the recently-enacted local accommodations taxes and local hospitality taxes, along with its ability to otherwise raise revenue, is an appropriate security under these circumstances, which is not a "nominal security bond" according to the figures presented by Mr. Spivey, *cf. Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007), is made independent of, but is

In addition, the Court directs that the City and County engage in mediation, same to be completed and conducted within twenty (20) days of the date of this order. The Court is informed by counsel for the City that counsel for the County has indicated that Karl A. Folkens, Esquire, is acceptable to the County to serve as a mediator. The Court is further informed by counsel for the City that it, too, finds Mr. Folkens acceptable and that Mr. Folkens has indicated that he is available to conduct this mediation on July 24, 2019, and continuing on August 1, 2019, should that become necessary. The Court therefore appoints Mr. Folkens to serve as mediator, with the cost to be split between the City and the County, and directs that the mediation be undertaken no later than August 1, 2019, continuing thereafter on a mutually agreed date, if necessary. The County has indicated to the Court its representatives will not be able to mediate on July 24, 2019. However, should the parties and Mr. Folkens be able to conduct the mediation any sooner than August 1, 2019, they may do so.⁴

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
 Judge for the Fifteenth Judicial Circuit

This ____ day of July, 2019
 _____, South Carolina

certainly bolstered by, the Court's view as expressed in the July 10, 2019, order denying reconsideration that the City is not even required to post a security bond under Rule 65(c) based on its status as a political subdivision.

⁴ By separate order, and with the consent of the City, the Court will grant the County's motion to stay any other proceedings in this Court while the County's appeal of the June 21 and July 10 orders is pending in the Court of Appeals or Supreme Court. That stay does not, however, relieve the County from its obligation to mediate as directed in the instant order.



Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of

Case Number: 2019CP2601732

Type: Order/Supersedeas

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157