

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

FEDERAL TRADE COMMISSION and :
THE STATE OF GEORGIA, :

Plaintiffs, :

v. :

CASE NO.: 1:11-cv-58 (WLS)

PHOEBE PUTNEY HEALTH SYSTEM :
INC., PHOEBE PUTNEY MEMORIAL :
HOSPITAL, INC., PHOEBE NORTH, INC., :
PALMYRA PARK HOSPITAL INC., and :
HOSPITAL AUTHORITY OF ALBANY- :
DOUGHERTY COUNTY, :

Defendants. :

ORDER

Before the Court is Plaintiffs Federal Trade Commission (FTC) and State of Georgia’s Motion for Temporary Restraining Order (hereinafter “TRO Motion”) (Doc. 4) and Motion for Preliminary Injunction (hereinafter “PI Motion”) (Doc. 5). Therein, Plaintiffs move the Court, pursuant to § 13(b) of the Federal Trade Commission Act (hereinafter “FTC Act”), *see* 15 U.S.C. § 53(b), and § 16 of the Clayton Act, *see id.* § 26, to enjoin Defendants Phoebe Putney Health System Inc. (“PPHS”), Phoebe Putney Memorial Hospital, Inc. (“PPMH”), Phoebe North, Inc. (“PNI”) (hereinafter collectively referred to as “Phoebe Putney”); HCA, Inc. (“HCA”); Palmyra Park Hospital, Inc. (“Palmyra”); and Hospital Authority of Albany-Dougherty County (“the Authority”), including their divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, from progressing towards the completion of the planned acquisition of Palmyra by Phoebe Putney, pursuant to which all management, economic, and operational control of Palmyra shall be transferred from Palmyra to Phoebe. (*See* Doc. 4 at 1-2).

Plaintiffs base their TRO Motion on the need for the Court to aid in the maintenance of the status quo during Plaintiff FTC's ongoing administrative proceedings, which includes a September 19, 2011 trial on the merits of the legality of Phoebe Putney's acquisition of Palmyra. (Doc. 4 at 2). Plaintiffs further argue that Defendants' commitment not to consummate the transaction until April 21, 2011, will terminate prior to the Court's ruling on Plaintiffs' PI Motion. (Doc. 4 at 2). Thus, Plaintiffs assert that temporary injunctive relief is necessary to prevent competitive harm during the pendency of the preliminary injunction proceedings.¹ (Doc. 4 at 2).

The Court holds, for reasons specifically stated in its sealed April 20, 2011 Order, that Plaintiffs have sufficiently established the need for a temporary restraining order based on their showing (1) of a substantial likelihood of success on the merits of their case, (2) that irreparable harm would result in the absence of the TRO, (3) that the balance of equities favors granting the TRO, (4) that the public interest would not be harmed by the injunction, Mesa Air Group, Inc. v. Delta Air Lines, Inc., 573 F.3d 1124, 1127 (11th Cir. 2009) (citing BellSouth Telecomms., Inc. v. MCImetro Access Transmission Svcs., LLC, 425 F.3d 964, 968 (11th Cir. 2005)), and that "no adequate remedy at law" exists, Reynolds v. Roberts, 207 F.3d 1288, 1299 (11th Cir. 2000) (citing Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 506-07 (1959)). Plaintiffs have therefore clearly carried their burden of persuasion to move the Court to grant the "extraordinary and drastic remedy" of a temporary restraining order. See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per curiam) (citation omitted).

Plaintiffs' TRO Motion (Doc. 2.) is therefore **GRANTED**, and Defendants are **ENJOINED** from proceeding or taking additional steps towards the consummation of the

¹ In lieu of the hearing on the TRO Motion requested by Plaintiffs (see Doc. 4 at 2), the Court held an in-chambers telephone conference with counsel for the Parties on April 20, 2011.

subject transaction. The instant Order shall remain in effect until the Court rules on Plaintiffs' PI Motion (Doc. 5), which the Court **STAYS** until a hearing can be held on said Motion or until further order of the Court. The Court shall separately notice the Parties for the hearing on Plaintiff's PI Motion.

It is further **ORDERED** that Defendants shall file their brief in response to Plaintiff's PI Motion (Doc. 5) by **Wednesday, May 4, 2011**, and that Plaintiffs shall file their brief in reply thereto by **Wednesday, May 11, 2011**. Within the response and reply briefs, the Parties shall specifically brief the issue of the asserted immunity of the Authority² raised in the Authority's counsel's April 20, 2011 letter to the Court and at the April 20, 2011 telephone conference between the Court and counsel for the Parties, as well as any other arguments in support of or against Plaintiff's PI Motion.

Finally, in light of the proprietary and confidential nature of matters contained in the Complaint (Doc. 2) and the Memorandum (Doc. 7) filed in support of Plaintiffs' TRO Motion (Doc. 4) and PI Motion (Doc. 5), the Parties and their counsel are **ORDERED** to comply, until further order of the Court, with the Court's April 20, 2011 oral order of protection to restrict access of pleadings and other filings in this case to outside counsel, to return to outside counsel all pleadings and briefs possibly distributed to the Parties, and to make no further distribution of pleadings and filings.

SO ORDERED, this 21st day of April 2011.

/s/ W. Louis Sands

**THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT**

² The Court's determination as to the necessity of the temporary restraining order is subject to any subsequent determination by the Court as to the propriety of this Court's or Plaintiff FTC's jurisdiction over the case—specifically concerning the issue of the Authority's immunity from suit as raised by the Authority's counsel. While the Court currently makes no pre-determination as to its jurisdiction, the Court finds that the status quo should be preserved pending consideration of this jurisdictional issue.