

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 18- CVS-

CITY OF ASHEVILLE,

Plaintiff

v.

BIRD RIDES, INC.,

Defendant.

)
) **TEMPORARY RESTRAINING ORDER**
)
)
)
)
)
)

THIS CAUSE was heard by the undersigned Presiding Superior Court Judge upon the application of the Plaintiff for a temporary restraining order pursuant to Rule 65 of the North Carolina Rules of Civil Procedure. Based upon the Plaintiff's Verified Complaint, the Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiff City of Asheville ("City") is a municipal corporation organized and existing under and by virtue of the laws of the State of North Carolina and is vested with powers in accordance with the provisions of the North Carolina General Statutes.
2. Defendant Bird Rides, Inc. is a Delaware Corporation with a principal place of business in California and is authorized to conduct business in North Carolina.
3. Defendant operates a web-application based scooter rental business in a number of cities in North Carolina.
4. On or about October 25, 2018, Defendant caused approximately two hundred (200) self-propelled motorized electric scooters to be parked on sidewalks within the City limits.
5. The scooters placed on City sidewalks do not have docking stations and display placards directing potential customers of Defendant to "unlock" them by downloading an app and paying a fee.
6. Defendant's website instructs that the scooters are to only be driven upon roads, not sidewalks.
7. The scooters have been parked and abandoned throughout the City, predominantly on City sidewalks.
8. Pursuant to N.C.G.S § 160A-296(a), the City is vested with authority and control over all of its streets, sidewalks, and other ways of public passage within its corporate limits, and

is given the express right to “regulate the use of the public streets, sidewalks, alleys and bridges.”

9. Pursuant to Section 12-53 of the Asheville City Code, it is unlawful to leave personal property on City property. This prohibition includes modes of personal transportation unless such items are secured in such a way not to obstruct streets or sidewalks.

10. Pursuant to Section 19-137 of the Asheville City Code, it is unlawful to park a vehicle on a city sidewalk.

11. Pursuant to Section 16-142 of the Asheville City Code, it is unlawful to sell, offer for sale, exhibit or demonstrate any goods, wares, merchandise, mechanical devices, animals or any article of any kind whatsoever, by whatever name called, upon any public street, sidewalk, square, avenue or alley within the corporate limits of the City.

12. Defendant initially agreed to cease operations, but has since recommenced its deployment of scooters in the City of Asheville.

13. Plaintiff has expended considerable resources in collecting and removing the Defendant’s vehicles from its sidewalks and property, and will continue to be forced to expend considerable resources to remedy the Defendant’s continued violations of Sections 12-53, 16-142, and 19-137 of the Asheville City Code

14. Sections 12-53, 16-142, and 19-137 of the Asheville City Code are designed to protect the safety and welfare of the citizens of the City of Asheville, and the Defendant’s continued actions in deploying the scooters constitutes an ongoing threat to the public safety.

15. Plaintiff will suffer immediate and irreparable injury unless Defendant is restrained from operating its business within City limits, and deploying scooters on City sidewalks.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes as a matter of law:

1. Plaintiff has demonstrated a reasonable likelihood of success on the merits of its claims.

2. The Defendant’s actions in operating its business within the corporate limits of the City of Asheville likely violate Sections 12-53, 16-142, and 19-137 of the Asheville City Code, and causes the city irreparable harm, insofar as the City is forced to divert its limited resources to remedy the Defendant’s numerous Code violations.

3. The Defendant’s actions in operating its business within the corporate limits of the City of Asheville likely violate Sections 12-53, 16-142, and 19-137 of the Asheville City Code, and pose a risk to public safety and welfare.

4. Plaintiff will suffer immediate and irreparable injury unless Defendant is restrained from operating its business within City limits, and deploying scooters on City sidewalks.

5. Injunctive relief is needed in order to preserve the *status quo* prior to the Court reaching a final resolution on the merits in this matter.

WHEREFORE, IT IS HEREBY ORDERED as follows:

1. Defendant shall cease operating its business within City limits, and deploying scooters on City sidewalks;

2. In the event that the Defendant is unable to remove and cease offering its scooters for public use within the City of Asheville by 8:00 AM on Sunday, October 28, 2018, Plaintiff shall be entitled to remove any remaining scooters from City streets or sidewalks, and hold them in a secure location for the duration of this Order;

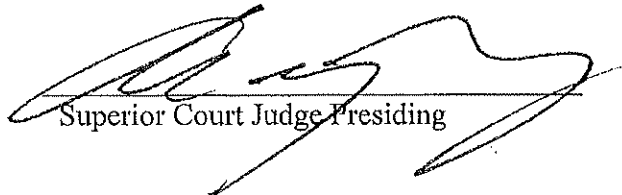
3. This matter shall be heard upon Plaintiff's Motion for Preliminary Injunction within ten (10) days of the entry of this Order, with said Motion to be set to be heard on November 5, 2018, at 2:00 PM;

4. Pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure, no security or bond is required to be posted by the Plaintiff to secure the Defendant from damages from the restraining order hereby granted;

5. Plaintiff shall cause a copy of this Temporary Restraining Order upon the Defendant in the manner provided for the service of process by the North Carolina Rules of Civil Procedure; and

6. Upon being provided with actual notice of this Order, it shall be binding upon the Defendant, as well as any of its officers, agents, servants, employees, and attorneys.

Entered this the 27th day of October, 2018, at 2018. 11:00 am


Superior Court Judge Presiding