

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

HEARTBEAT USED CARS AND TRUCKS, LLC,

Plaintiff,

vs.

Case No. 2014-2534-CK

RODNEY DUSABLON, individually and d/b/a
HOT ROD'S AUTO and JENNIFER DUSABLON,
jointly and severally,

Defendants.

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OPINION AND ORDER

Plaintiff has filed a motion for a preliminary injunction. Defendants have filed a response and request that the motion be denied.

Facts and Procedural History

On May 7, 2014, Defendants attended a sheriff's sale of the contents of a building located at 153 Grand Street, Mt. Clemens, MI ("Subject Property"). At the time of the auction, Defendant Rodney Dusablon ("Defendant Rodney") contacted Plaintiff's representatives, Donald Plater and Hank Plambeck, and advised them that the contents of the Subject Property included classic Pontiac car parts, and that the parts had a value of up to \$175,000.00 (the "Parts"). Defendants advised Plaintiff's representatives because the Parts would be particularly valuable to Plaintiff as a restorer and seller of classic Pontiacs.

After advising Plaintiff's representatives of the sale, Defendant Rodney allegedly inquired as to whether Plaintiff would be interested in sharing the Parts 50/50. Plaintiff responded that it was interested. Defendant Rodney ultimately successfully bid \$13,000.00 for

the Parts and tendered \$1,000.00 as a down payment. The remaining balance of \$12,000.00 was due by May 19, 2014, and was to be paid to Filhaut Properties, LLC.

On the morning of May 19, 2014, Plaintiff's agent Donald Plater and Defendant Rodney allegedly went to PNC Bank and withdrew a cashier's check from Plaintiff's account for \$12,000.00 made payable to Filhaut Properties, LLC. After departing the bank, Mr. Plater and Defendant Rodney traveled to Plaintiff's office to wait for Mr. Plater's wife and his partner Hank Plambeck. After Mr. Plater exited the vehicle, Defendant Rodney allegedly left the premises with the check, and went to the sheriff's department where he used the check to pay off the balance of the bid price. Plaintiff alleges that Defendants took the check without its permission and have sold and/or relocated the Parts without Plaintiff's knowledge or permission.

On June 26, 2014, Plaintiff filed its complaint in this matter containing claims for: Count I- Breach of Contract, Count II- Promissory Estoppel, Count III- Specific Performance of a Partnership Agreement, and Count IV- Statutory Conversion. On the same date, Plaintiff filed a motion for a preliminary injunction preventing Defendants from converting the Parts to their own use. On August 4, 2014, the Court entered a temporary restraining order enjoining Defendants from selling, conveying, transferring or disposing of the Parts, requiring Defendants to account for any of the Parts it had already sold, and to and ordering all proceeds from any such sale(s) to be held in escrow.

After obtaining leave of the Court, on October 30, 2014, Plaintiff filed its amended complaint in this matter containing claims contained in its original complaint as well as a claim for "return of personal property." On November 17, 2014, the Court entered an order requiring Defendants to allow Plaintiffs representatives to conduct an inventory of all the Parts at Defendant's business location.

On November 26, 2014 and December 8, 2014 the Court held an evidentiary hearing with respect to Plaintiff's motion for a preliminary injunction. At the conclusion of the hearing, the Court took the matter under advisement and ordered the parties to file their proposed findings of fact and conclusions of law. The parties have since filed the pleading requested by the Court.

Standard of Review

Injunctive relief is an extraordinary remedy that is ordered by a court only when justice requires, there is no adequate remedy at law, and there is real and imminent danger of irreparable harm. *Acer Paradise, Inc v Kalkaska County Rd Comm'n*, 262 Mich App 193; 684 NW2d 903 (2004). In determining whether to issue a preliminary injunction, a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. *Campau v McMath*, 185 Mich App 724, 729; 463 NW2d 186 (1990). The moving party has the burden to establish that a preliminary injunction should be granted. MCR 3.310(A)(4).

Analysis

Pursuant to a longstanding principle, "a particularized showing of irreparable harm ... is ... an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008). (citation and internal quotation marks omitted).. Accordingly, "a preliminary injunction should not issue where an adequate legal remedy is available." *Id.*

In this case, Plaintiff contends that it will be irreparably harmed if an injunction is not issued because the value of its classic cars will be diminished if they are forced to use re-manufactured parts rather than original parts. However, Plaintiff's position itself indicates that its damages are quantifiable. Moreover, Plaintiff has been given an opportunity to conduct an accounting of the Parts, thereby granting it an opportunity to evaluate exactly what parts are in Defendant's control. Even assuming that Plaintiff is correct that the value of the classic cars is greatly diminished without original parts, Plaintiff has failed to establish that the difference in value is impossible to calculate.

"Irreparable harm" must be legally noncompensible or impossible to calculate; economic injuries are not irreparable. *Thermatool Corp. v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998). While the value of the Parts may be difficult to calculate, the Court is satisfied that Plaintiff has failed to establish that its potential damages are impossible to calculate or that economic damages are insufficient. Consequently, the Court is satisfied that Plaintiff has failed to satisfy the essential requirement of showing irreparable harm. As a result, Plaintiff's motion for a preliminary injunction must be denied.

Conclusion

Based on the evidence and testimony presented by the parties, the Court finds that Plaintiff's motion for a preliminary injunction must be DENIED. The August 4, 2014 temporary restraining order, and the portions of all subsequent orders extending the temporary restraining order are hereby dissolved. **The Court adjourns the status conference scheduled for March 12, 2015 at 8:00am to April 1, 2015 at 8:00am so the parties have time to review the opinion.**

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: March 11, 2015

JCF/sr

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