

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

BENEPAY TECHNOLOGIES, LLC,

Plaintiff/Counter-Defendant,

Case No. 18-00170-CBB

vs.

HON. CHRISTOPHER P. YATES

BENEPAY, LLC; and STEVEN ADEN,

Defendants/Counter-Plaintiffs/
Third-Party Plaintiffs,

vs.

LYCEUM BUSINESS SERVICES, LLC,

Third-Party Defendant.

OPINION AND ORDER GRANTING IN PART, AND DENYING IN
PART, DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION

On February 1, 2018, the Court issued a twelve-page Opinion and Order Dissolving Temporary Restraining Order and Denying Plaintiff's Motion for Preliminary Injunction. In that lengthy opinion, the Court painstakingly analyzed the likelihood that Benepay Technologies, LLC ("BPT") could succeed on the merits of its five claims against Defendants BenePAY, LLC ("Benepay") and Steven Aden. Since the Court issued that opinion, the case has become more complicated with the addition of counterclaims and a third-party defendant, Lyceum Business Services, LLC ("Lyceum"), but the essential facts remain the same. Thus, the Court need not again recite the factual background of this dispute, which is spelled out in excruciating detail in the opinion issued on February 1, 2018. Instead, the Court can quickly turn to the request for injunctive relief from the defendants and counter-plaintiffs, who have asked the Court to issue a sweeping injunctive order that would turn the parties' world upside down. Although the Court is willing to grant limited injunctive relief, the bulk of the pending request must be denied.

The parties agree that the document identified as the BPT operating agreement includes a choice-of-law provision that instructs the Court to apply Maryland law in addressing this dispute. Accordingly, the Court shall begin its analysis by setting forth the principles of Maryland law that govern the request for preliminary injunctive relief. Under Maryland law, “[t]he purpose of a preliminary injunction is to preserve the status quo between the parties, pending a hearing on the merits.” Maloof v State Dep’t of Environment, 136 Md App 682, ___; 767 A2d 372, 378 (2001). This type of injunction “is designed to maintain the ‘last actual, peaceable, noncontested status which preceded the pending controversy,’ until the parties’ rights and obligations can be adjudicated at trial.” See id. Maryland law draws a distinction between a routine preliminary injunction, which merely maintains the status quo, and “a mandatory or affirmative injunction,” which “requir[es] or command[s] the doing of the action specified.” Maryland Trust Co v Tulip Realty Co of Maryland, 220 Md 399, 412; 153 A2d 275, 284 (1959). Consequently, the Court of Special Appeals of Maryland recently observed – albeit in an unreported opinion – that any injunction “requesting a change to the status quo require[s] a higher standard of proof than a victory on the merits.” Monument Bank v American Bank, FSB, No 2242 (Md App June 21, 2017) (available as 2017 WL 2666162). Thus, the Court is much more willing to afford injunctive relief that preserves the status quo than to grant injunctive relief that requires or commands any party to take affirmative actions to satisfy the Court’s injunctive order. This distinction undergirds the Court’s rulings on the motion by Defendants Benepay and Aden for a preliminary injunction.

In deciding whether to issue a preliminary injunction at the behest of Defendants Benepay and Aden, the Court must “consider the following factors: ‘(1) the likelihood that [Benepay and Aden] will succeed on the merits; (2) the “balance of convenience” determined by whether greater injury would be done to [Plaintiff BPT] by granting the injunction than would result by its refusal; (3) whether [Benepay and Aden] will suffer irreparable injury unless the injunction is granted; and (4) the public interest.’”

See Schade v Maryland State Bd of Elections, 401 Md 1, ___; 930 A2d 304, 325 (2007). “The burden of producing evidence to show the existence of these four factors is on [Benepay and Aden,] and ‘failure to prove the existence of even one of the four factors will preclude the grant of preliminary injunctive relief.’” Id. With these principles in mind, the Court must turn to the preliminary injunction request by Benepay and Aden.

With respect to the likelihood of success on the merits, the Court has already telegraphed its view that Defendants Benepay and Aden are likely to win on their claim that Plaintiff BPT committed the first and most egregious breaches of the agreements that prescribed the terms of the merger between Benepay and Third-Party Defendant Lyceum. The evidence adduced thus far indicates that, in contravention of its contractual obligations, BPT ran roughshod over Benepay in implementing the merger. But the Court cannot truncate its analysis and award mandatory and affirmative injunctive relief to Benepay and Aden simply because, looking down the road, the Court anticipates that Benepay and Aden will likely succeed on their breach-of-contract claim against BPT. Several other considerations convince the Court that any preliminary injunctive relief must be carefully limited in order to maintain the status quo.

Defendants Benepay and Aden have asked the Court to render a preliminary injunction not only returning to Benepay control over bank accounts, servers, client relationships, and employees for which Plaintiff BPT has assumed responsibility, but also redirecting revenue streams (and, perhaps, returning all funds) that have been directed to BPT. This truly extraordinary injunctive relief would create a host of insoluble problems for BPT, which currently relies upon the revenue streams to pay employees whom BPT has obtained from Benepay. Moreover, the nature of such sweeping injunctive relief clearly would undermine the merger with Lyceum that Benepay approved several years ago. Needless to say, that type of mandatory and affirmative injunctive relief would cause greater injury to BPT than the harm that may befall Benepay and Aden in the absence of a broad preliminary injunction. Accordingly, the Court has

no authority under Maryland law to award the five-part preliminary injunction proposed by Benepay and Aden during oral argument on February 23, 2018, Schade, 401 Md at ___; 930 A2d at 325, so the Court must limit its analysis to the propriety of less-sweeping injunctive relief.

The fallback position proposed by Defendants Benepay and Aden simply involves transparency for those two parties by requiring Plaintiff BPT to afford Aden read-only access to bank accounts as well as financial information in QuickBooks accounts. Providing that kind of access satisfies the “balance of convenience” contemplated by Maryland law, see Schade, 401 Md at ___; 930 A2d at 325, and will enable Benepay and Aden to ensure that the status quo is maintained until this dispute can be resolved. After all, Benepay and Aden acquiesced in the existing arrangement for a significant period of time, so the maintenance of that arrangement with full transparency simply returns the competing parties to “the last, actual, peaceable, non-contested status which preceded the pending controversy.” Eastside Vend Distributors, Inc v Pepsi Bottling Group, Inc, 396 Md 219, ___; 913 A2d 50, 67 (2006).

The final details of the Court’s analysis involve the last two factors in the approach prescribed by Maryland law. That is, the Court concludes that, so long as Defendants Benepay and Aden are given read-only access to bank accounts and financial information, they will not likely suffer irreparable injury in the absence of a sweeping preliminary injunction that transfers full control over everything that once belonged to Benepay.¹ Finally, the Court does not believe that harm to the public interest will flow from narrow injunctive relief affording transparency, but injury to third parties such as BPT’s employees and customers almost certainly will result if the Court issues the broad preliminary injunction requested by Benepay and Aden.

¹ The Court’s only nagging concern is the payment of attorney fees for Defendants Benepay and Aden. If Benepay is deprived of all revenue, it may lack the resources to maintain its attorneys. But the Court cannot permit its concern about attorney fees to serve as the tail that wags the dog of injunctive relief. Instead, the Court must consider other options to address the attorney-fee dilemma.

For all of the reasons set forth in this opinion, the Court shall furnish narrow injunctive relief designed to ensure transparency by affording Defendants Benepay and Aden read-only access to Plaintiff BPT's bank accounts and other financial information. Consequently, **IT IS ORDERED that Benepay Technologies, LLC, shall provide read-only access to Benepay, LLC, and Steven Aden to ensure that Benepay, LLC, and Steven Aden can observe the activities in all bank accounts and financial software maintained by Benepay Technologies, LLC.**² In all other respects, the motion for injunctive relief filed by Benepay and Aden is denied.³

IT IS SO ORDERED.

Dated: February 26, 2018



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

² Although the Court recently established a scheduling order that will result in resolution by trial in early 2019, the Court is willing to entertain a motion from any party to accelerate the existing schedule. The Court's award of limited preliminary injunctive relief triggers an obligation to set the trial within six months of the entry of today's order. See MCR 3.310(A)(5). More importantly, the Court ultimately must seriously consider a request by Defendants Benepay and Aden to unwind the merger or dissolve Plaintiff BPT, and the Court's decision on that matter should come sooner, rather than later, for the sake of all parties interested in the outcome of that request.

³ Given the Court's narrow ruling on the request for a preliminary injunction by Defendants Benepay and Aden, the Court need not take up Plaintiff BPT's cross-motion for injunctive relief that would make clear that BPT controls the bank accounts that each side claims as its own. Implicit in the Court's ruling is a declaration that BPT may, for the time being, control those bank accounts so long as Benepay and Aden have read-only access to each of those accounts.