

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

ANNA'S HOUSE CORPORATE LLC,

Plaintiff,

Case No. 19-08608-CBB

vs.

HON. CHRISTOPHER P. YATES

MERITAGE HOSPITALITY GROUP,  
INC.; and OCM DEVELOPMENT, LLC,

Defendants.

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ORDER DENYING PLAINTIFF'S MOTION  
FOR TEMPORARY RESTRAINING ORDER

Plaintiff Anna's House Corporate LLC ("Anna's House") designed and now operates a chain of successful restaurants that specialize in brunch service. In 2016, Defendant Meritage Hospitality Group, Inc. ("Meritage") entered into discussions with Anna's House about a potential merger or a joint venture of some sort. Instead of merging or entering into a joint venture, however, Meritage chose to develop its own brunch-style restaurants under the name of "Morning Belle." It seems that the development of that concept has led to the impending opening of a "Morning Belle" restaurant on the East Beltline in Grand Rapids. Before the grand opening of that restaurant, Anna's House not only filed a complaint against Meritage and Defendant OCM Development, LLC ("OCM"), but also moved for an *ex parte* temporary restraining order ("TRO") and a preliminary injunction. For all of the reasons that follow, the Court shall deny the request for an *ex parte* TRO.

The Court has the raw power to issue an *ex parte* TRO, see MCR 3.310(B), but the Court has repeatedly expressed its discomfort with granting such *ex parte* relief when circumstances allowed for consideration of the positions of both sides. See MCR 3.310(B)(1). The purported emergency

in this case was so foreseeable that Plaintiff Anna's House had ample time to pursue injunctive relief only after providing notice to the defendants. Rome wasn't built in a day, and neither was the new "Morning Belle" restaurant on the East Beltline. The restaurant manifestly was constructed over a period of weeks or months in full view of the public, so Anna's House could have commenced this action, sought injunctive relief, and given notice to the defendants weeks ago. Thus, the Court finds that an *ex parte* TRO is improper in this case.

But beyond that procedural problem, the Court concludes that Anna's House has not made an adequate showing to support the issuance of an *ex parte* TRO. To award injunctive relief under MCR 3.310, the Court must consider the plaintiff's likelihood of success on the merits, the potential for irreparable harm to the plaintiff in the absence of injunctive relief, the balance of harms that the plaintiff and the defendants will suffer depending upon the issuance of injunctive relief, and the harm that may befall third parties and, more broadly, the public interest. Davis v City of Detroit Financial Review Team, 296 Mich App 568, 613 (2012). Additionally, injunctive relief is not appropriate if the plaintiff has an "adequate remedy at law[.]" Id. at 614.

As an initial matter, "[e]conomic injuries are not irreparable because they can be remedied by damages at law[.]" and a "relative deterioration of competitive position does not in itself suffice to establish irreparable injury." Thermatool Corp v Borzym, 227 Mich App 366, 377 (1998). The opening of a single "Morning Belle" restaurant several miles from the nearest Anna's House venue creates, at most, some likelihood of a deterioration of competitive position for which damages can readily be calculated and assessed. Obviously, the more "Morning Belle" restaurants that open, the greater the threat to Anna's House's existence, but nothing in the papers filed with the Court leads to the conclusion that "Morning Belle" restaurants are about to spring up all over Michigan.

Turning to the balance of harms, the defendants will be severely harmed if the Court issues an order barring them from opening their restaurant as scheduled, whereas Plaintiff Anna's House merely faces competition from one more restaurant miles away from the closest Anna's House site. Similarly, permitting the "Morning Belle" restaurant to open advances the public interest by creating more dining options in the greater Grand Rapids area, whereas barring the opening of the "Morning Belle" restaurant stifles competition and inhibits the investment of capital to open restaurants in the greater Grand Rapids area. Although the Court's analysis may change after reviewing the evidence offered by the parties at a hearing on Anna's House's motion for a preliminary injunction, the Court is now firmly convinced on the existing record that the request by Anna's House for an *ex parte* TRO should not be granted. Consequently, the motion for an *ex parte* TRO is denied, but the request for a preliminary injunction is reserved pending an evidentiary hearing in which all of the parties should participate.

IT IS SO ORDERED.

Dated: September 26, 2019



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