

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON**

RMR SOLUTIONS, LLC,
Plaintiff/Counter-Defendant,

Case No. 18-30048-CB
Hon. Michael P. Hatty

v

CCT TELECOMMUNICATIONS, INC,
d/b/a CORNERSTONE PRODUCTS
GROUP,
Defendant/Counter-Plaintiff,

**OPINION AND ORDER DENYING DEFENDANT’S
MOTION FOR PRELIMINARY INJUNCTION**

At a session of said Court held in the Courthouse,
City of Howell, County of Livingston,
on the 22nd day of August, 2019.

THIS MATTER comes before this Court on Defendant’s Motion for Preliminary Injunction. The parties having submitted briefs and the parties having appeared for oral argument on the matter, and this Court being otherwise fully advised in the premises, Defendant’s Motion for Preliminary Injunction is DENIED for the reasons set forth herein.

I

This breach of contract matter arises out of a distributorship agreement (hereinafter “Agreement”) between Plaintiff and Defendant, wherein Defendant would distribute mold stain removal products manufactured by Plaintiff to certain retailers. Plaintiff alleges that Defendant breached the Agreement by failing to timely and completely compensate Plaintiff for the products supplied and fees agreed upon, and not using its best efforts to distribute Plaintiff’s products, because in part, Defendant started distributing a direct competitor’s products to the same retailers that were receiving Plaintiff’s product. Defendant denies these allegations, and has filed a counter-claim alleging that Plaintiff breached first by refusing to abide by return policies,

demanding payment of certain fees, and failing to give Defendant the best price and terms under the Agreement.

While this action was pending, Plaintiff terminated the Agreement and either is currently or does intend to market its products directly to the retailers subject to the Agreement. Defendant claims that the termination was improper and threatens its customer relationships and “goodwill.” Plaintiff asserts that money damages are available relative to any injury that may be caused by it selling directly to retailers and that Defendant’s arguments concerning “good will” are not a “particularized showing of irreparable harm.” Naturally, both parties believe that they are likely to succeed on the merits.

II

An injunction is an extraordinary remedy which should be granted only when justice requires. *Fancy v Egrin*, 177 Mich App 714, 720 (1989). Four factors must be considered in determining whether to grant injunctive relief: (1) the likelihood that the party requesting 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 will be harmed more by absence of an injunction than the opposing party would be by granting the relief; (4) the harm to public interest if the injunction is issued. *Michigan State Employees Ass’n v Dept of Mental Health*, 421 Mich 152 (1984).

Demonstrating irreparable harm is an “indispensable requirement” to obtaining a preliminary injunction. *Michigan Coalition of State Employees Unions v Michigan Civil Serv Comm’n*, 465 Mich 212 (2001). Irreparable harm requires the showing of a non-compensable injury for which there is no legal measure of damages. *Thermatool Corp v Borzyn*, 227 Mich App 366 (1998). Further, “[a]t the hearing on an order to show cause why a preliminary

injunction should not issue, the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued whether or not a temporary restraining order has been issued.” MCR 3.310(A)(4).

Of these four factors, the most important is the likelihood that the movant will suffer irreparable injury of a nature beyond the power of the court to remedy before a trial on the merits may occur. The showing of irreparable injury must be “particularized.” *Lash v City of Traverse City*, 479 Mich 180 (2007). There must be a real and imminent danger of irreparable injury. *Michigan Council 25, AFSCME v Wayne County*, 136 Mich App 21, 25 (1984). Speculative or potential injuries do not suffice. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 11 (2008). Thus, if trial will take place before any injury is likely to occur, injunctive relief is not appropriate. Nor is equitable relief appropriate if the injury is of such a nature that other adequate relief, normally money damages, is available. Thus, once imminent irreparable injury has been established, the court must balance the other factors. In general, the extent to which a party must demonstrate a likelihood of success varies inversely with the degree of harm the party will suffer absent an injunction. *Roth v Bank of the Commonwealth*, 583 F2d 527, 538 (CA6 1978).

III

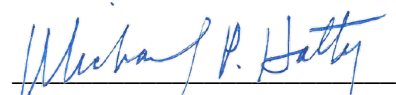
Defendant has not met its burden of showing it will suffer irreparable harm if the injunction is not issued. This is a breach of contract case, where the prevailing party can fully be compensated with money damages. Specifically, the parties either know or can present evidence as to the quantity of products sold by Plaintiff subsequent to the termination of the Agreement as well as the amount of money Defendant should have been compensated for each. That amount, or some similarly calculated amount, will be Defendant’s money damages, which are clearly

calculable and available—and where an adequate legal remedy exists, an injunction should not issue. This Court agrees with Plaintiff that Defendant’s argument concerning “good will” is not a particularized harm enough that the issuance of a preliminary injunction is warranted.

Having concluded that Defendant has not meet its burden concerning whether it will suffer irreparable harm if the injunction is not issued, and Defendant is not entitled to the relief requested herein, Defendant’s Motion is DENIED without consideration of the remaining factors concerning the issuance of a preliminary injunction.

IT IS SO ORDERED.

THIS ORDER DOES NOT RESOLVE THE LAST PENDING
CLAIM AND DOES NOT CLOSE THE CASE.



Michael P. Hatty
Circuit Court Judge