

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

MARK ROMAN,  
Plaintiff,

Case No. 20-30756-CB  
Hon. Michael P. Hatty

v.

BROOKE MATHIS and UM SALOON  
CONCEPTS, INC.,  
Defendants,

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

At a session of the 44<sup>th</sup> Circuit Court,  
held in the City of Howell, Livingston County,  
on the 16th day of July, 2020

THIS MATTER comes before this Court on Plaintiff’s Verified Motion for Preliminary Injunction. This Court, having reviewed Plaintiff’s Motion and Brief in Support and Defendants’ Response, having heard oral argument from the parties at a hearing held on July 8, 2020, and being otherwise fully advised in the premises, and for the reasons stated herein DENIES Plaintiff’s Motion.

**I**

Plaintiff commenced this action on June 1, 2020, concerning a bar in Howell known as “Wooly Bully’s.” According to the verified complaint, Plaintiff had operated two previous locations of Wooly Bully’s in Clinton Township and Northville until about 2000 and 2003, when he “had some legal problems,” which forced him to close those locations and prevented him from owning a liquor license in his name. So, when Plaintiff saw an opportunity to open a new location in Howell, he recruited his niece, Defendant Mathis, to “act as a figurehead to obtain the license on his behalf.” Accordingly, the corporation, Defendant UM Saloon, all leases, governmental approvals, and other contracts were in her name. Plaintiff alleges that there was an

unwritten agreement that this would continue until Plaintiff's daughter reached the age of majority and such assets could be transferred to his daughter's name. Plaintiff asserts that he, alone, operated the bar and conducted the business. However, Plaintiff apparently brought this action once Defendant Mathis asserted her ownership of the business and required payment to transfer the assets to another party.

Plaintiff requests that this Court grant a preliminary injunction to "maintain the status quo." In response, Defendant Mathis, an attorney licensed to practice law in the State of Michigan, acknowledges that there was such a verbal agreement between the parties in exchange for a profit-sharing agreement providing her with 10 percent and Plaintiff with 90 percent. Plaintiff apparently functioned as the "General Manager" of Defendant UM Saloon Concepts, Inc. Defendant further alleges that Plaintiff breached on this agreement and the parties entered a settlement agreement, wherein they agreed that Plaintiff's daughter could purchase the business from her for a total of \$132,000. The specific agreement provided for monthly payments until this amount was paid and then title would transfer to Plaintiff's daughter. Defendant points to an e-mail chain to that effect.

Defendant Mathis further asserts that she received a letter from the Michigan Department of Treasury on January 16, 2020, indicating that Plaintiff had failed to pay \$15,000 in taxes owed by the business; that Plaintiff wrongfully obtained an \$80,000 PPP loan during the COVID-19 pandemic and transferred \$25,000 of that money into his personal bank account; and that Plaintiff had embezzled \$4,000 per month to pay his personal rent. Ultimately, Defendant wishes to transfer her business interests to Plaintiff or his daughter so that it is no longer in her name. In the meantime, she has "fired" Plaintiff as the General Manager and hired a an individual named Edward Smith to run the business in the interim.

## II

Michigan Court Rule 3.310(A)(4) regarding Preliminary Injunctions states, in pertinent part:

At 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.

An injunction is an extraordinary remedy which should be granted only when justice requires. *Fancy v Egrin*, 177 Mich App 714, 720; 442 NW2d 765 (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, 157–58; 365 NW2d 93 (1984).

Of these four factors, the most important is the likelihood that plaintiff will suffer irreparable harm. *Lash v City of Traverse City*, 479 Mich 180, 196; 735 NW2d 628 (2007). 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, 225-226; 634 NW2d 692 (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, 377; 575 NW2d 366 (1998). A breach of contract, by itself, does not establish that a party will suffer irreparable injury. *Id.* “Granting extraordinary equitable relief to remedy... economic injuries is unnecessary and inappropriate because they can be remedied by

damages at law.” *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 10; 753 NW2d 595 (2008). The “mere loss of profits, or relative deterioration of competitive position, do not in themselves suffice.” *Merrill Lynch, Pierce, Fenner & Smith, Inc v EF Hutton & Co, Inc*, 403 Fsupp 336, 343 (ED Mich, 1975) (internal citations omitted). See also *Thermatool Corp v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998). Refusal to grant a preliminary injunction does not render moot the subject matter of the complaint for an injunction. *Dunnebacke v Detroit, GH & M Ry Co*, 248 Mich 450; 227 NW 811 (1929). Similarly, a denial of a motion for a preliminary injunction is not res judicata precluding a final judgment for the plaintiff. *Hopkins v Crantz*, 334 Mich 300; 54 NW2d 671 (1952).

### III

This Court finds that Plaintiff did not meet his burden to prove that a preliminary injunction should issue. Plaintiff alleges he would suffer an irreparable harm from the termination of his employment as the General Manager at UM Saloon’s restaurant, Woolly Bully’s. However, the termination of Plaintiff’s employment is an economic injury which is not an “irreparable harm” under Michigan law. *Acorn Building Components, Inc v Local Union No 2194, UAW*, 164 Mich. App. 358, 366; 416 N.W.2d 442 (1987) (“[e]conomic injuries are not irreparable because they can be remedied by damages at law.”); See also, *State Employees Ass’n v Dep’t of Mental Health*, 421 Mich 152, 158; 365 NW2d 93 (1984) (“In the absence of contractual agreements to the contrary, and of unlawful reasons for discharge such as race or sex discrimination, private sector employees are terminable at the will of their employers.”) (internal citations omitted). Viewing the alleged injury in light of the totality of the circumstances affecting, and the alternatives available to, Plaintiff, this Court concludes that Plaintiff has failed to establish the extraordinary circumstances required for satisfying the indispensable element of an irreparable injury to Plaintiff in this case. The other harms alleged by Plaintiff are either not

harms to the Plaintiff, but rather to Defendant UM Saloon Concepts, Inc., or are similarly economic in nature. Since Plaintiff failed to prove an “irreparable harm,” which is an indispensable element of a preliminary injunction, his Motion fails. *Michigan Coalition of State Employees Unions v Michigan Civil Serv Comm’n*, 465 Mich 212, 225-226; 634 NW2d 692 (2001).

Lastly, Plaintiff failed to meet his burden to prove that Plaintiff will be harmed more by the absence of an injunction than Defendants would be by the issuance of an injunction.

#### IV

Based on the foregoing reasons, this Court DENIES Plaintiff’s Motion.

**IT IS SO ORDERED.**

A handwritten signature in blue ink that reads "Michael P. Hatty". The signature is written in a cursive style and is positioned above a horizontal line.

Hon. Michael P. Hatty  
Circuit Court Judge