

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

SIMIRON INC.,

Plaintiff,

v.

EVAN GILBERT,

Defendant.

Case No. 25-211958-CB

Hon. Victoria Valentine

KIENBAUM HARDY VIVIANO PELTON
& FORREST, P.L.C.
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Defendant - In Pro Per

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

At a session of said Court, held in the
County of Oakland, State of Michigan
February 4, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Plaintiff's Motion for Preliminary Injunction. This Court has reviewed the pleadings filed by the parties and the motion and response briefs. Oral argument was held on the above-entitled motion on January 29, 2025.

OPINION

I.

Overview

This case involves a dispute over a “Confidentiality, Non-Solicitation, and Non-Competition Agreement” (“Agreement”). The Defendant appears *in pro per* and lives in Florida. Defendant worked for the Plaintiff’s company in Florida and Plaintiff’s claims of non-compete and non-solicitation all arose in Florida. Further, Defendant only worked for the Plaintiff for approximately 5 months, from February 6, 2024, until July 25, 2024.

The non-solicitation provision of the Agreement provides

4.) Non-Solicitation. I acknowledge and agree that I will acquire considerable knowledge about, and expertise in, certain areas of the SIMIRON INC.’s business, and that I may have contact with the SIMIRON INC.’s suppliers and customers. While I am working for SIMIRON INC. and for a period of two (2) years after the termination of my working relationship with SIMIRON INC., I shall not, directly or indirectly:

a. Solicit or induce any employee of SIMIRON INC. to leave the employ of the SIMIRON INC.

b. Hire any employee of SIMIRON INC. or any employee who left the employ of SIMIRON INC. within a year of the date after my working relationship with the SIMIRON INC. has ended.

c. Solicit or accept the business of any person or entity who, at any time during my working relationship with SIMIRON INC., was a customer of SIMIRON INC. or which SIMIRON INC. was soliciting to be a customer.

d. Attempt to cause any customer to refrain from maintaining or acquiring any product or service provided or offered by SIMIRON INC. to such customer.

e. Attempt to cause any supplier to refrain from supplying goods or raw materials to SIMIRON INC. (emphasis added)

Plaintiff alleges that Defendant violated the non-competition and non-solicitation Agreement by accepting a position with a direct competitor, US Resin Supply and Manufacturing, located less

than 10 miles from Plaintiff's business, less than six months after his termination. Despite the terms of the Agreement, Defendant is reportedly selling the same products for the competitor. Additionally, Plaintiff claims that Defendant solicited at least one customer by offering to undercut Plaintiff's pricing and has reached out to at least six more customers in violation of the non-solicitation clause.

It unclear whether the customers Plaintiff complains Defendant solicited were "at any time during [Defendant's] working relationship with Simiron, Inc., . . . a customer of Simiron Inc. or which Simiron Inc. was soliciting to be a customer." See Agreement, Non-solicitation Section 4c. Defendant states that:

It is not in the public interest for a company to be able to hire an employee with existing industry knowledge and contacts and leverage those for 5 months and then fire them for no cause, and then for said employee to be unable to earn a living in the industry where his experience is most relevant. Worse still, I was fired so Simiron could avoid paying commissions on a significant pending sale to a customer I introduced to the company. I understand that asking for an injunction is a form of equitable relief and that there is a general principle that Simiron cannot come to court with "unclean hands." Firing me to avoid paying a commission is unclean hands.

Defendant's Verified Answer to Simiron's Motion for Preliminary Injunction p 5.

Defendant claims that he never had access to confidential or proprietary company information. Defendant provided a link to where the alleged pricing of Plaintiff can be found. In addition, Defendant claims he was terminated after landing a large job, because Plaintiff is or was attempting to avoid paying Defendant commissions. While Defendant has not filed a Counter-claim for unpaid commissions, this allegation is relevant to this Court's analysis.

II.

Standard of Review

In accordance with MCR 3.310(A), the Court has the authority to grant a preliminary injunction. However, "injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of

irreparable injury. The purpose of a preliminary injunction is to preserve the status quo pending a final hearing regarding the parties' rights." *Johnson v Michigan Minority Purchasing Council*, 341 Mich App 1, 8–9; 988 NW2d 800 (2022). (Citations omitted). "The party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued. . ." MCR 3.310(A)(4).

To determine whether a preliminary injunction should issue, the Court must consider the following four factors:

- (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.

Johnson, 341 Mich App at 9 (quotation marks and citations omitted). See also *State Emps Ass'n v Dep't of Mental Health*, 421 Mich 152, 157–58; 365 NW2d 93 (1984).

The Court should also consider "whether an adequate legal remedy is available to the applicant." *State Emps Ass'n*, 421 Mich at 158. "A preliminary injunction should not be issued if an adequate legal remedy is available. Economic injuries generally are not sufficient to demonstrate irreparable injury because such injuries typically can be remedied by damages at law. In addition, the mere apprehension of future injury or damage cannot be the basis for injunctive relief." *Sandstone Creek Solar, LLC v Twp of Benton*, 335 Mich App 683, 706; 967 NW2d 890 (2021) (citations omitted). "The grant or denial of a preliminary injunction is within the sound discretion of the trial court." *Bratton v Detroit Auto Inter-Ins Exch*, 120 Mich App 73, 79; 327 NW2d 396 (1982).

III.

Analysis

The Plaintiff has not met its burden of establishing that it is entitled to a preliminary injunction under Michigan law's four-factor analysis. Each factor is discussed below.

A. Likelihood of Success on the Merits

Under this prong of the analysis, the moving party must demonstrate that it is likely to prevail on the merits of a fully litigated action. That is, the moving party must demonstrate a substantial likelihood of success.

In the present action, the Court cannot conclude that the Plaintiff is likely to prevail on the merits, especially considering that Plaintiff may have been the first to breach the agreement, as Defendant alleges in his answer.¹ Further, it is unclear if the customers were customers of Plaintiff at the relevant time under section 4c of the Agreement. Consequently, this factor does not weigh in favor of granting a preliminary injunction.

B. Irreparable Injury to Plaintiff

"[A] particularized showing of irreparable harm is an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters Union Loc 376 v City of Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008). Further, "a preliminary injunction should not issue where an adequate legal remedy is available." *Id.* "Economic injuries generally are not sufficient to demonstrate irreparable

¹ Based upon the Michigan Supreme Court's holding in *Pontiac Fire Fighters Union Loc. 376 v City of Pontiac*, this Court is compelled to weigh the claims that were stated by the Defendant and for which the Plaintiff did not respond. "For reasons that are unclear, the circuit court in its written opinion granting the preliminary injunction seemed to credit only plaintiff's allegations and did not at all consider defendant's contrary evidence. Plaintiff failed to carry its burden of proof to make a particularized showing of irreparable harm and also failed to maintain this showing in the face of defendant's contrary evidence. A grant of a preliminary injunction under these circumstances falls outside the principled range of outcomes." *Id.*, 482 Mich. 1, 12–13, 753 NW2d 595, 602 (2008).

injury because such injuries typically can be remedied by damages at law.” *Sandstone Creek Solar*, 335 Mich App at 706. It is also “well settled that an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural.” *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 651; 825 NW2d 616 (2012) (citation omitted).

In the present case, Plaintiff’s business operations or harm to its relationship with customers are speculative and conjectural. Further, to the extent that such damage exists, they are economic in nature and can be remedied by damages at law. To grant a preliminary injunction in such a situation would trivialize the extraordinary nature of injunctive relief. Accordingly, this factor does not weigh in favor granting injunctive relief.

C. Balancing of Harm

Under this prong of the analysis, this Court must evaluate whether the harm suffered by the nonmoving party caused by granting the proposed injunctive relief will outweigh the harm suffered by the moving party if the injunctive relief is denied.

In the instant action, the harm to the Plaintiff is speculative and conjectural as Plaintiff has not currently identified any damage. Conversely, Defendant, in essence, claims that Plaintiff was the first to breach by failing to pay or attempting to withhold commissions. Further, Defendant claims that the non-compete and non-solicitation provisions are too broad and that he tried but could not make a living in another industry. In this scenario, both parties may suffer harm. Consequently, this factor is neutral in granting a preliminary injunction.

D. Harm to the Public

Under this factor of the analysis, this Court must address whether the public policy of Michigan is furthered or undermined by the granting of injunctive relief.

Here, the Plaintiff argues that the public interest strongly supports enforcing the Agreement through the entry of a preliminary injunction.

Michigan public policy and jurisprudence prohibit the issuance of injunctive relief unless there exists real and imminent danger of irreparable harm. *Johnson v Michigan Minority Purchasing Council*, 341 Mich App at, 8–9. Here, the absence of sufficient irreparable harm governs this public interest analysis in the instant case, and the public interest favors denying injunctive relief.

IV.

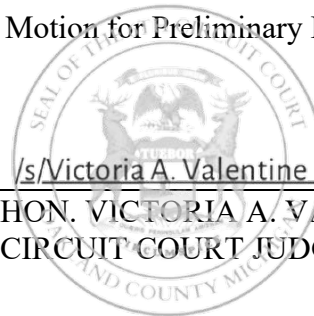
Conclusion

The weighing of the four factors in the Court’s analysis weighs against imposing a preliminary injunction.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Plaintiff’s Motion for Preliminary Injunction is DENIED.



/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 2/4/25