

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

SAAD KAJY,

Plaintiff,

v

Case No. 21-189832-CB
Hon. Michael Warren

AMIL KAJY,

Defendant.

OPINION & ORDER DENYING
EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER PENDING
HEARING ON MOTION FOR PRELIMINARY INJUNCTION

At a session of said Court, held in the
County of Oakland, State of Michigan
September 1, 2021.

PRESENT: HON. MICHAEL WARREN

OPINION

Overview

The Plaintiff has filed an Ex Parte Motion for Temporary Restraining Order Pending Hearing on Motion for Preliminary Injunction involving a business dispute between him and his brother in connection with the operation of a limited liability company of which the brothers are the only two members.

At stake is whether such relief should be granted when it is based on a now struck Complaint and Motion for Entry of Preliminary Injunction Order, the Plaintiff has failed to provide an appropriate verification or affidavit, the Plaintiff has failed to show that ex parte relief is necessary to prevent irreparable harm, the Plaintiff failed to provide

the appropriate certification, and the Plaintiff fails to cite sufficient authority? Because the answer is “no,” the requested relief is denied.

Discussion

I. There is No Proper Pleading Warranting the Relief Sought.

Because the relief sought is based on a now struck Complaint and Motion for Entry of Preliminary Injunction Order, the Plaintiff’s request has no foundation and must be denied.

II. There is No Affidavit or Verification.

The request for ex parte relief is not supported by an appropriate affidavit or verified pleading in violation of MCR 3.310(B)(1). Even if the Court were to examine the now struck Complaint and Motion for Entry of Preliminary Injunction Order, it only contains a defective single statement that is neither an affidavit nor a verification. MCR 2.119(B)(1)-(3) requires that an affidavit must be “made on personal knowledge;” “state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion;” and “show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit.” MCR 2.119(B). The now Complaint and Motion for Entry of Preliminary Injunction Order has the following statement (emphasis in original): ‘THE STATEMENTS CONTAINED WITHIN THE COMPLAINT [SIC] AS STATED HEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND INFORMATION.’ The statement fails to state facts with particularity (instead it simply says the statements in the Complaint are true). Furthermore, the affidavit fails to aver that the Plaintiff can “testify competently to the facts.” Perhaps such statement attempts

to constitute a “verification” under MCR 1.109(D)(2)(3). However, it is not. A verification requires the following statement:

“I declare under the penalties of perjury that this _____ has been examined by me and its contents are true to the best of my information, knowledge, and belief.”

Because the Plaintiff’s statement has no reference to the penalties of perjury, it is fatally defective. In sum, the Plaintiff’s Motion is supported by neither an affidavit nor a verification.

III. Ex Parte Relief is Unnecessary to Prevent Irreparable Harm Resulting from the Delay Required to Effect Notice and the Moving Party has Failed to Demonstrate that Notice Itself Will Precipitate Adverse Action Before an Order can be Issued.

The Plaintiff’s attempt to show that there is an irreparable injury, loss, or damage that will result from the delay required to effect notice or that notice itself will precipitate adverse action before an order can be issued is superficial and unconvincing. The Plaintiff - the Defendant’s brother - can certainly pick up the phone or send an email before any purported irreparable harm would occur.

IV. There is No Certification of Attempts to Give Notice or Why Notice Should Not Be Required.

The Plaintiff’s attorney failed to certify in writing the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required. MCR 3.310(B)(1)(b). The Plaintiff has failed to present any law to suggest that the Court can simply ignore this Rule of Court.

V. Insufficient Authority is Cited to Support the Plaintiff’s Arguments.

The Plaintiff failed to cite sufficient authority to support its position that an ex parte order is warranted under the instant circumstances thereby abandoning its position insofar as ex parte relief is requested. MCR 3.310(A)(3); MCR 2.119(B)(2); *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959); *Wilson v Taylor*, 457 Mich 232, 243 (1998).

/s/Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE