

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

HBPO NORTHER AMERICA, INC. et al.,

Plaintiffs,

Case No. 21-190331-CB
Hon. Michael Warren

v

U.S. FARATHANE, LLC, et al.

Defendants.

OPINION AND ORDER
GRANTING PLAINTIFFS' EMERGENCY MOTION
FOR PRELIMINARY INJUNCTION

At a session of said Court, held in the
County of Oakland, State of Michigan
October 6, 2021

PRESENT: HON. MICHAEL WARREN

OPINION

I
Introduction

Before the Court is Plaintiffs' Emergency Motion for Preliminary Injunction.¹
Having reviewed the Motion and the Response, having entertained some oral argument

¹ The Court previously denied the portion of the Plaintiffs' Emergency Motion requesting a Temporary Restraining Order.

(and dispensing with remainder of oral argument under MCR 2.119(E)(3)), and otherwise being fully informed in the premises, the Court issues this Opinion and Order.

At stake is whether a preliminary injunction should issue when (1) the public interest of enforcing contracts generally rises and falls with the merits, but in this circumstance favors the Plaintiffs in light of the potential for cascading irreparable harm throughout the economy, (2) harm to the Plaintiffs outweighs the harm to the Defendants, (3) the Plaintiffs have shown they are likely to prevail on the merits, and (4) there is a showing of irreparable harm? Because the answer is “yes,” the Motion is granted

II Background

HBPO North America, Inc. and its affiliates (collectively, “HBPO”) allege that U.S. Farathane, LLC and its affiliates (collectively, “USF”) are its sole source supplier of 40 critical automotive parts which HBPO incorporates into finished products, which in turn HBPO supplies to its original equipment manufacturer automotive customers (“OEM customers”) for incorporation into the OEM customers’ vehicles and vehicle programs. HBPO further alleges that USF stopped releasing shipments of parts to HBPO on September 30, 2021 following HBPO’s rejection of USF’s demand for price increases on the 40 parts retroactive to January 1, 2021 and for amended contracts implementing the price increases. Just last night, USF refused to provide a new shipment of parts. The Plaintiffs seek injunctive relief to prevent the shutdown of production; damage to HBPO

and its OEMs customers, employees, and other OEM customer suppliers; and damage to HBPO's reputation and goodwill with its OEM customers.

USF argues injunctive relief is unwarranted because HBPO cannot show irreparable harm where it has not alleged it could not pay the increased prices; HBPO is unlikely to succeed on the merits because the parties lack legally binding requirements-contracts; the balance of harms weigh against entry of an injunction because USF cannot supply parts at existing prices without incurring economic losses; and the parties' dispute has little bearing on the public interest.

III
The Plaintiffs have met their burden
that preliminary injunctive reliefs warranted

A
The Law

Under MCR 3.310(A), this Court has the authority to grant a preliminary injunction. The burden is on the party seeking injunctive relief to prove why such relief should be issued. MCR 3.310(A)(4) ("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 a preliminary injunction should issue is determined by a four-factor analysis" *MSEA v Dep't of Mental Health*, 421 Mich 152, 157 (1984). This analysis must address the following factors:

- 1) Harm to the public interest if an injunction issues;

- 2) Whether harm to the moving party in the absence of injunctive relief outweighs the harm to the opposing party if a stay is granted;
- 3) The strength of the moving party's demonstration that the moving party is likely to prevail on the merits; and
- 4) Demonstration that the applicant will suffer irreparable injury if injunctive relief is not granted.

[*MSEA*, 421 Mich at 157-158.]

In addition, this inquiry "often includes the consideration of whether an adequate legal remedy is available to the applicant." *Id.* at 158. Other considerations to be addressed when considering injunctive relief "are whether it will preserve the status quo so that a final hearing can be held without either party having been injured and whether it will grant one of the parties final relief prior to a hearing on the merits." *Campau v McMath*, 185 Mich App 724, 729 (1990). See also *Thermatool Corp v Borzym*, 227 Mich App 366, 376 (1998).

Moreover, "[t]he general rule is that whenever courts have found a mandatory injunction essential to the preservation of the status quo and a serious inconvenience and loss would result to plaintiff and there would be no great loss to defendant, they will grant it." *Steggles v National Discount Corp*, 326 Mich 44, 50 (1949). See also *Gates v Detroit & Mackinac Railway Co*, 151 Mich 548, 552 (1908); *L & L Concession Co v Goldhar-Zimmer Theatre Enterprises, Inc*, 332 Mich 382, 388 (1952), quoting *Steggles*, 326 Mich at 50.

Furthermore, this Court's ruling "must not be arbitrary and must be based on the facts of the particular case." *Thermatool*, 227 Mich App at 376. Generally, the granting of such relief falls within the broad discretion of the court. *Steggles*, 326 Mich at 50 (holding that granting injunctive relief "is largely a matter of discretion of the trial court"); *Campau*, 331 Mich at 729 (the Court of Appeals "will not overturn a trial court's grant or denial of a preliminary injunction save for an abuse of discretion." *Bratton v DAIIE*, 120 Mich App 73, 79 (1982).

A preliminary injunction should not be issued if an adequate legal remedy is available, and the mere apprehension of future injury or damage cannot be the basis for injunctive relief. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 9 (2008). Economic injuries generally are not sufficient to demonstrate irreparable injury because such injuries typically can be remedied by damages at law. *Alliance for Mentally Ill of Mich v Dep't of Community Health*, 231 Mich App 647, 664 (1998).

B **Application of the Law**

1. Harm to the Public Interest.

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

In this particular case, the public interest rises or falls with the underlying merits of the case. Michigan law generally favors enforcing written contracts. See e.g., Const

1963, art 1, § 10 (“No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted”); MCL 566.132; *Rory v Cont’l Ins Co*, 473 Mich 457, 468 (2005) (internal footnotes and quotation marks omitted) (“A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written. Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract. This Court has previously noted that “[t]he general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts.”).²

² The *Rory* Court, quoting *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51-52 (2003) (internal citations omitted), elaborated:

This approach, where judges . . . rewrite the contract . . . is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance such as a contract in violation of law or public policy. This Court has recently discussed, and reinforced, its fidelity to this understanding of contract law in *Terrien v Zwit*, 467 Mich. 56, 71 (2002). The notion, that free men and women may reach agreements regarding their affairs without government interference and that courts will enforce those agreements, is ancient and irrefutable. It draws strength from common-law roots and can be seen in our fundamental charter, the United States Constitution, where government is forbidden from impairing the contracts of citizens, art. I, § 10, cl. 1. Our own state constitutions over the years of statehood have similarly echoed this limitation on government power. It is, in short, an unmistakable and ineradicable part of the legal fabric of our society. Few have expressed the force of this venerable axiom better than the late Professor Arthur Corbin, of Yale Law School, who wrote on this topic in his definitive study of contract law, *Corbin on Contracts*, as follows:

“One does not have ‘liberty of contract’ unless organized society both forbears and enforces, forbears to penalize him for making his bargain and enforces it for him after it is made.” [15 Corbin, *Contracts* (Interim ed.), ch. 79, § 1376, p. 17.

On the other hand, Michigan favors a free market by which parties may of their own accord reach commercial agreements for the provision of services and goods. See, e.g., MCL 445.774 (Michigan Antitrust Reform Act). In the absence of a legal prohibition, contracting parties should be encouraged to explore the market to find the most mutually beneficial agreement possible. This not only furthers the freedom of contract, but it also benefits society by creating the most rational allocation of goods and services, thereby increasing the wealth of the entire society. See, e.g., Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations, Representative Selections* (Bruce Mazlish, editor, The BobbsMerrile Company, Inc, 1961) (originally published 1776).³ This proposition is nothing more than mirror image of the public policy of favoring the freedom of contract. In the absence of an enforceable agreement to the contrary, the public interest favors the free market and not binding parties to obligations to which they have not assented. Const 1963, art 1, § 9 (“Neither slavery, nor involuntary servitude unless for the punishment of

³ Adam Smith at 108 explains in one particularly poignant passage:

The interest of the dealers, however, in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow-citizens. The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it.

crime, shall ever be tolerated in this state”). As such, the public interest generally favors whoever is most likely to prevail on the merits.

However, contrary to the arguments of USF, there is a wider public interest in maintaining a robust, vibrant workforce and viable corporate operations. If HBPO’s inability to obtain the parts at issue results in the shutdown of the OEM customers and the layoff of OEM customer workers and other suppliers of the OEM customers and the layoff of their employees, this would have a grave impact on the lives of the displaced workers and the viability of the OEM customers and their other suppliers. This factor strongly favors HBPO.⁴

2. Balance of Harm.

Under this prong of the analysis, this Court must evaluate whether the harm suffered by the nonmoving parties caused by granting the proposed injunctive relief will outweigh the harm suffered by the moving party if the injunctive relief is denied. Granting the requested injunctive relief will compel USF to continue supplying parts at the current prices. In contrast, denying injunctive relief will allow USF to continue its refusal to ship parts, causing an interruption in the supply chain, the shutdown of production and the potential layoff of employees not just at HBPO but at the OEM customers and their suppliers. This ripple effect could result in manufacturing

⁴ See authorities in the discussion of irreparable harm below.

shutdowns throughout the American and global economies. The balancing of the harms favors granting injunctive relief.

3. 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. Here, the Plaintiffs have demonstrated a probability of success on the merits for the threshold issues of whether the parties entered legally binding requirements-based contracts for the supply of certain critical automotive parts, whether USF breached and/or repudiated the parties' contracts and whether USF's continued performance is excused or commercially impractical. Despite the Defendants creative legerdemain, the contracts at issue here appear to follow the industry standard for supplier-OEM customer relationships. That the contracts will ultimately be found to be unenforceable is dubious. In fact, the Defendants *want* the agreements to be enforceable, except for one term - the price! As a result, this factor, at least preliminarily, strongly favors HBPO.

4. Irreparable Harm.

Irreparable harm means harm that cannot be remedied by damages. *Thermatool*, 227 Mich App at 377. In other words, "to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty." *Id.* Moreover, the "[t]he injury must be both certain and great, and it must be

actual rather than theoretical.” *Id.* Our Supreme Court elaborated in *Michigan Coalition of State Employee Union v Civil Service Comm’n*, 465 Mich 212, 225-226 (2001) (footnote omitted) in the context of injunctive relief sought pursuant to Const 1963, art 11, § 5:

Thus, it is clear that in 1940 it was beyond dispute in the legal community that a party needed to make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction. Moreover, there is no basis to conclude that the requirements to secure a preliminary injunction changed in any pertinent way between the adoption of the amendment in 1940 and the adoption of its successor, § 5, in the present Michigan Constitution in 1963, or even up to this day. The requirement of a showing of irreparable harm remains as it did a century ago. In our latest statement on this issue in *Michigan State Employees Ass’n v Dep’t of Mental Health*, 421 Mich 152, 157-158 (1984), this Court reiterated the requirement of a showing of irreparable harm as a prerequisite for a preliminary injunction, explaining that it was a requirement for the issuance of a preliminary injunction to demonstrate ‘that the applicant will suffer irreparable injury if a preliminary injunction is not granted.’

Accordingly, we conclude that a particularized showing of irreparable harm was, and still is, as our law is understood, an indispensable requirement to obtain a preliminary injunction. Moreover, the people, in causing the Michigan Constitution to be amended in 1940, evidenced no desire, as they had done with standing, to modify the traditional rules that had pertained with regard to this requirement for a preliminary injunction. Therefore, when considering the request for a preliminary injunction in this matter, the trial court and the Court of Appeals were in error in granting any preliminary injunction without a showing of concrete irreparable harm to the interests of a party before the Court.

Here, the Plaintiffs have demonstrated there is irreparable harm where USF’s continued refusal to supply and release the parts will cause HBPO and its OEM customers to suffer production shutdowns necessitating the potential layoffs of employees and will create harm that extends beyond HBPO and its OEM customers,

including to goodwill and numerous ripple effects throughout the United States economy. See, e.g., *Intertec Systems, LLC v Multimatic, Inc.*, 04-CV-736661-DT (ED Mich, October 14, 2004), pp 6-7 (citations omitted) (holding that a supplier's refusal to ship parts resulting in a production shut down for a Mazda 6 vehicle would result in a "cascading effect" leading to losses for the plaintiff, its OEM customer, and employees that was not entirely compensable with money, and that "the ceasing of shipments in the automobile industry can wreak particular havoc" and may result in "immediate and dramatic consequences" including production shutdowns and the layoff of "innumerable employees"); *Eberspaecher N. American Inc v Nelson Global Productions, Inc*, No. 12-11045, 2012 WL 1247174 (ED Mich, April 13, 2012).

USF presents no credible challenges to these arguments. Instead, it makes a hollow counter: "This is not a case about shutting down HBPO's business. Nor is it not a case in which any OEM's assembly lines are at risk." [Response p 1.] More particularly, in its Response, USF argues that "HBPO could, and should, have paid an increased price and pursued contract damages through the judicial process," [Response, p 5], and "HBPO can pay USF an increased price and pursue contract damages in the ordinary course of litigation" [Response, p 6]. Yet, when provided the option of HBPO paying the increased price under protest to resume the shipment of parts, USF refused. At oral argument, when asked by the Court to stipulate shipping the parts at USF's demanded price under protest, USF completely contradicted its written Response. USF refused to allow HBPO to order the parts at the higher price under protest (i.e., a reservation of rights to "pursue contract

damages” as suggested by USF in its Response) and later litigate who truly violated the contract. In other words, USF reneged on this potential solution (which would have negated the issue of irreparable harm) and argued that it would only provide shipments of the parts if HBPO relinquished its breach of contract claims. So much for MCR 1.109(E)(5).⁵

This factor heavily favors the Plaintiffs.

5. Other Considerations.

None of the other miscellaneous considerations set forth in Michigan jurisprudence favor denying injunctive relief.

In light of the foregoing analysis, preliminary injunctive relief is warranted.

⁵ The Court does not take the apparent violation of MCR 1.109(E)(5) lightly, and only defers for now the issue of whether sanctions should be rendered under MCR 1.109(E)(6). The Court is more concerned with timely preventing the looming irreparable harm. The Plaintiffs are free to file a motion of their own regarding the propriety of levying sanctions based on the about face of the Defendants’ position and apparently misleading briefing.

ORDER

In light of the foregoing Opinion, Plaintiffs' Motion for Preliminary Injunction is **GRANTED**.

IT IS HEREBY ORDERED that USF is enjoined from ceasing to supply or ceasing to release parts to HBPO and shall continue to supply parts as ordered by HBPO pursuant to HBPO's releases;

IT IS FURTHER ORDERED that with respect to shipments of parts supplied to HBPO on or after the date of this Order, HBPO shall pay to USF the amounts that USF received per part prior to September 30, 2021;

IT IS FURTHER ORDERED that this injunctive relief shall apply to USF's operations in Michigan, Texas, and Mexico, and in any other geographic location necessary to give effect to this Order and to otherwise preserve the status quo.

