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

CARDIOLOGY AND VASCULAR ASSOCIATES P.C.,

Plaintiff,

v

Case No. 24-208743-CB
Hon. Michael Warren

JOSEPH MANAGEMENT LLC and TOWER BUILDING & DEVELOPMENT CORP,

Defendants.

OPINION AND ORDER DENYING CARDIOLOGY AND VASCULAR ASSOCIATES P.C.'S MOTION FOR PRELIMINARY INJUNCTION

At a session of said Court, held in the County of Oakland, State of Michigan November 7, 2024

PRESENT: HON. MICHAEL WARREN

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OPINION

I
Introduction

Before the Court is Cardiology and Vascular Associates P.C.'s ("CAVA") Motion for Preliminary Injunction. Having reviewed the Motion and Response, presided over oral argument, 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 does not favor a preliminary injunction in light of the strength of the merits and lack of irreparable harm, (2) CAVA has not demonstrated it is likely to prevail on the merits, (3) CAVA has not demonstrated the harm by denying injunctive relief outweigh the harms if injunctive relief is granted, and (4) CAVA has not demonstrated irreparable harm? Because the answer is "no," the requested relief is denied.

II
Background

CAVA operates a doctor's office in Bloomfield Hills, Michigan and requires parking for its employees and patients. On or about July 15, 2020, CAVA entered into a Parking License Agreement with Joseph Management LLC for the right and license to utilize up to 17 parking spaces at property commonly known as 42505 Woodward Avenue in Bloomfield Hills. At that time, Joseph Management owned the building and the 54-space parking lot at 42505 Woodward Avenue. The "Term" of the Parking License Agreement

> . . . shall commence on the Effective Date and shall continue for a minimum of 365 days. Thereafter the License shall automatically continue for as long as the Purchaser owns the property and shall grant the Seller's affiliate "Cardiology and Vascular Associates, P.C.["] or its assignee full right and license to utilize up to 17 Parking space[s] on the Lot at a rate of Forty Five dollars ($45) per spot, per month. In the event of a sale, Licensor agrees to provide Licensee not less than a 120-day written notice of termination and work with Licensee to secure a Parking Facility Lease Agreement with the Buyer of the property. Licensee shall have the right to terminate this

> AGREEMENT without cause by providing Licensor a written termination notice not less [than] 60 days prior to the termination date.
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> [Parking License Agreement, ¶3.][1]

On November 10, 2023, Joseph Management transferred ownership of the building and parking lot to Tower Building & Development Corp. ("Tower") and terminated the Parking License Agreement. Joseph Dedvukaj is the resident agent and member of Joseph Management and the resident agent and president, treasurer, secretary, director and incorporator of Tower. On November 23, 2023, CAVA was informed that its employees and patients would need to stop parking at 42505 Woodward Avenue on July 1, 2024.

On December 13, 2023, CAVA terminated its lease in the building at 42505 Woodward Avenue. CAVA has entered into a lease at 42717 Woodward Avenue which has 46 parking spaces. 95 spaces are also allegedly available at 42557 Woodward Avenue. The building and the entire parking lot at 42505 Woodward Avenue is currently leased to Advanced Dermatology and CEIS (Re-Think) clinics.

On July 8, 2024, CAVA received email correspondence indicating that its employees cannot use parking spaces at 42505 Woodward Avenue. On July 11, 2024, CAVA received email correspondence indicating that CAVA is neither licensed nor permitted to park at 42505 Woodward Avenue and warning that all vehicles will be immediately towed off the premises and on July 12, 2024, CAVA's counsel received

[1] The Parking License Agreement does not define the term "Purchaser."

correspondence indicating that CAVA is illegally parking and trespassing on property owned by Tower which is not a party to any agreement with CAVA and warning that all CAVA related vehicles must be removed by 5:00 pm on July 15, 2024 otherwise they would be towed.

On July 24, 2024, CAVA filed a Complaint for Breach of Contract and Injunctive Relief. On July 25, 2024, CAVA's request for a Temporary Restraining Order was denied. CAVA now moves for a preliminary injunction enjoining the Defendants and all affiliated or associated entities, joint ventures, officers, agents, employees, and parties in privity of contract, from taking any action inconsistent with the Defendants' obligations under the Parking License Agreement and ordering the Defendants to continue to provide 17 parking spaces under the Parking License Agreement and CAVA to continue to make payments as defined under the Parking License Agreement. CAVA argues that without judicial intervention, it has no adequate remedy at law, and it will be irreparably harmed if the Court does not grant injunctive relief compelling the Defendants to perform their obligations under the Parking License Agreement.

III
CAVA Has Not Met Its Burden of Showing that Injunctive Relief Should Be Granted

A
The Law Regarding Injunctive Relief

Under MCR 3.310(A), this Court is vested with 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;
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> 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;
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> 3) The strength of the moving party's demonstration that the moving party is likely to prevail on the merits; and
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> 4) Demonstration that the applicant will suffer irreparable injury if injunctive relief is not granted.
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> [*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-Zimner 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; *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. After all, Michigan law generally favors enforcing written contracts and agreements. 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]

Notwithstanding the foregoing, Michigan public policy and jurisprudence prohibits the issuance of injunctive relief unless there is a risk of irreparable harm. In the end, the absence of sufficient irreparable harm governs this public interest analysis in the instant case, and the public interest favors denying injunctive relief.

[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:
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> > "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.

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.

In the instant action, CAVA argues that its relationships with its employees and patients will be irreparably harmed if injunctive relief is not granted because their cars will be towed, or they will have nowhere to park to receive and/or provide care. CAVA argues the Defendants will not be harmed if required to perform in accordance with the Parking License Agreement. However, the Defendants argue that injunctive relief would harm the current tenants of 42505 Woodward Avenue by depriving them of parking spaces for their employees and patients. In the end, the balancing of harms favors the Defendants.

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. That is, the moving party must demonstrate a substantial likelihood of success.

Here, CAVA argues that the Defendants anticipatorily repudiated the Parking License Agreement and their refusal to provide the 17 parking spaces is a material breach of the parties' agreement. However, the license only continues for as long as Joseph

Management owns the property and Joseph Management transferred ownership of the building and parking lot to Tower on November 10, 2023. There is no dispute that Tower is not a party to the Parking License Agreement and "Michigan law respects the separate existences of corporate entities—and limited-liability companies—even when one entity owns another, or when a single individual owns an entire entity." *Quinlan v Gendron*, unpublished per curiam opinion of the Court of Appeals, issued October 26, 2023 (Docket No. 363579), p 3, citing *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 650 (1984) ("We recognize the general principle that in Michigan separate entities will be respected"). As revealed on the record, CAVA is basing its argument on piercing the corporate veil, yet that theory is not even pled in the Complaint. Plus, CAVA must overcome a large hurdle to compel the Court to pierce the corporate veil. In the end, CAVA has not demonstrated it is more likely to prevail on the merits.

4. Irreparable Harm.

"[A] particularized showing of irreparable harm is an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters Union Local 376,* 482 Mich at 9 (quotation marks, citation, and ellipses omitted). 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.

Even if CAVA was to show it is likely to prevail on the merits (and it has not), CAVA has not demonstrated irreparable harm to warrant injunctive relief. CAVA argues that the Defendants' threatened refusal to honor their contractual obligations would cause incalculable financial loss, the loss of customer goodwill and a disruption of

CAVA's business. However, CAVA fails to demonstrate any such harm has occurred and Michigan jurisprudence is well-settled that the mere apprehension of future injury or damage cannot be the basis for injunctive relief. *Pontiac Fire Fighters Union Local 376*, 482 Mich at 9. Further, CAVA's Motion omits that 46 parking spaces are available at 42727 Woodward Avenue and 95 spaces are available at 42557 Woodward Avenue. Moreover, CAVA claims it will suffer financial loss which is harm that can be remedied with calculable money damages. After all, the parking spaces *have* been allocated a financial worth - $45 a month per spot. In the end, CAVA has not met its burden of demonstrating irreparable harm necessary to warrant injunctive relief.

5. Other Considerations.

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

In light of the foregoing analysis, under the totality of circumstances, injunctive relief is denied.

ORDER

In light of the foregoing Opinion, Cardiology and Vascular Associates P.C.'s ("CAVA") Motion for Preliminary Injunction is DENIED.

/s/ Michael Warren

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HON. MICHAEL WARREN
CIRCUIT COURT JUDGE