

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SUSQUEHANNA LEGAL AID FOR	: NO. CV-2024-01041
ADULTS AND YOUTH D/B/A/ SLAAY,	:
Plaintiff,	:
vs.	:
	: CIVIL ACTION - LAW
MARK AND SUZANNE WINKELMAN and	:
THE PAJAMA FACTORY, LLC AND P.J.	:
HOLDING, LLC,	:
Defendants.	: Petition for Preliminary Injunction

OPINION AND ORDER

This matter came before the Court on October 9, 2024, for hearing on the Plaintiff’s Amended Petition seeking a preliminary injunction and Amended Motion for Expedited Consideration. Both Plaintiff and the Defendants appeared with counsel. After a full hearing, the Petition is dismissed without prejudice to re-file, for the reasons more fully set forth below.

FINDINGS OF FACT:

1. Defendants Mark and Suzanne Winkelman (hereinafter collectively “Winkelman”) are the members of a limited liability company named P.J. Holdings, LLC, which in turn is the owner of one or more parcels of real property situate at 1307 Park Avenue, Williamsport, Pennsylvania 17701. Winkelman are the members of a separate limited liability company known as the Pajama Factory, LLC, which is the operating entity for the real estate. For ease of reference, both limited liability companies will hereinafter be referred to as the “Pajama Factory” and the real property owned and operated by those limited liability companies will be referred to as the “Premises.”
2. The Premises contains eight (8) buildings, several of which have been leased to commercial tenants. The Plaintiff is one of those tenants.
3. According to Winkelman, the Premises contains approximately 300,000 square feet of leasable space, of which approximately 240,000 has a functional sprinkler system, and 60,000 does not.
4. According to Winkelman, all but three (3) of the commercial tenants at the Premises are occupying space which is sprinklered.

5. As a result of an inspection conducted by an agency of the City of Williamsport (hereinafter the “City”), the City served Winkelman with a notice—dated July 18, 2024—introduced into evidence at Exhibit G, which directed the Defendants to vacate the Premises, unless and until the entire Premises is served by a functional sprinkler system. The notice gave Defendants an option, in the interim, of providing a “fire watch” defined as in person security by trained personnel, alert for signs of a potential fire, on a twenty-four (24) hour per day, seven (7) days per week basis (hereinafter the “Eviction Notice”).
6. Defendants have filed a timely appeal to the Notice, which has been the subject of an appeal hearing before an agency of the City (hereinafter the “Eviction Appeal”). Defendants have received no response from the City on the eviction appeal.
7. During the pendency of the Eviction Appeal, Defendants have engaged fire watch services at the Premises. Because of the fire watch service, the effect of the Eviction Notice has been stayed.
8. Plaintiff introduced no testimony to suggest that the Defendants intend to terminate the fire watch service. Thus, there is no testimony that Plaintiff is currently threatened with eviction.
9. In the event that the fire watch service is terminated by Defendants, and unless the City withdraws or modifies the Eviction Notice, Plaintiff may be threatened with eviction.
10. When questioned by the Court regarding the eventual outcome of the Eviction Appeal, Mark Winkelman responded that he hoped for an outcome which involved some compromises regarding the position taken by the City in the Eviction Notice.
11. Plaintiff contends that local media coverage of issues related to the Eviction Notice and the Eviction Appeal have had a negative effect upon the reputation of the Plaintiff.
12. The Court finds that local media have reported issues related to the Eviction Notice and the Eviction Appeal, including the hearing conducted before an agency of the City. Those reports have centered around the position taken by the City in connection with the Eviction Notice, and Defendants’ response and the Eviction Appeal. Those reports

have not been directed at Plaintiff, or Plaintiff's business operations. Thus, Plaintiff's claim of negative effect upon Plaintiff's business reputation is speculative.

13. The City representative testified that the Eviction Notice was issued based upon concerns about the size of the buildings at the Premises, the lack of a functional sprinkler system, and the fact that the Premises is situated in a residential neighborhood.
14. Winkelman's testimony regarding the potential for compromise between Winkelman and the City appears reasonable, since some aspects of the testimony in support of the Eviction Notice were unclear to the Court. By way of example:
 - a. It is unclear why the residential neighborhood surrounding the Premises is safer if the eight (8) buildings were vacant. While a large fire at the Premises could certainly have catastrophic results, occupancy during daytime hours might reduce, rather than increase, the risk of such a fire.
 - b. It is undisputed that the Defendants have operated commercial leasing at the Premises for many years. The urgency of the Eviction Notice is unclear.
 - c. The commercial leases appear to be limited to retail and offices uses, which would not require residential occupancy. Thus, the Court is unclear why the Eviction Notice was not calculated to forbid residential or overnight use.
 - d. Eighty percent (80%) of the Premises is protected by a sprinkler system. It is unclear why the Eviction Notice was not directed at the unprotected areas.

THE LEGAL TEST FOR A PRELIMINARY INJUNCTION:

The six (6) part test for issuance of a preliminary injunction is settled Pennsylvania law:

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. Sixth, and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest. *Summit Towne Centre*, at 646–47, 828 A.2d at 1001. If a petitioner fails to establish *314 any one of the aforementioned prerequisites, a reviewing court need not address the others. *Id.*, at 646, 828 A.2d at 1001.

As stated above a plaintiff seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by money damages. *Summit Towne Centre*, at 646, 828 A.2d at 1001. **In order to meet this burden, a plaintiff must present "concrete evidence" demonstrating "actual proof of irreparable harm."** *Kessler*, 851 A.2d at 951. **The plaintiffs claimed "irreparable harm" cannot be based solely on speculation and hypothesis.** *Id.*, 851 A.2d at 951. Moreover, for purposes of a preliminary injunction the claimed harm must be *irreversible* before it will be deemed irreparable. *See Sovereign Bank v. Harper*, 674 A.2d at 1085, 1093 (Pa.Super.1996).

Greenmoor, Inc. v. Burchick Const. Co., 908 A.2d 310, 314 (Pa. Super. Ct. 2006)(emphasis added).

Further, our Supreme Court has explained that the factors necessary to support the issuance of a preliminary injunction are not considerations, but required elements:

In ruling on a preliminary injunction request, a trial court has “apparently reasonable grounds” for its denial of relief where it properly finds that any one of the following “essential prerequisites” for a preliminary injunction is not satisfied. *See Maritrans GP*, 602 A.2d at 1282–83 (requirements for preliminary injunction are “essential prerequisites”); *County of Allegheny v. Commonwealth*, 518 Pa. 556, 544 A.2d 1305, 1307 (1988) (“For a preliminary injunction to issue, every one of the prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.”). First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. *Singzon v. Dep’t of Pub. Welfare*, 496 Pa. 8, 436 A.2d 125, 127–28 (1981); *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 471 Pa. 1, 369 A.2d 1164, 1167–68 (1977); *Ala. Binder & Chem. Corp. v. Pa. Indus. Chem. Corp.*, 410 Pa. 214, 189 A.2d 180, 184 (1963). Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. *Maritrans GP*, 602 A.2d at 1283; *Valley Forge Historical Soc’y v. Washington Mem’l Chapel*, 493 Pa. 491, 426 A.2d 1123, 1128–29 (1981); *Ala. Binder & Chem. Corp.*, 189 A.2d at 184. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. *Valley Forge Historical Soc’y*, 426 A.2d at 1128-1129; *Herman*, 141 A.2d at 577–78. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. *Anglo-Am. Ins. Co. v. Molin*, 547 Pa. 504, 691 A.2d 929, 933–34 (1997); *Maritrans GP*, 602 A.2d at 1283–84; *Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 499 Pa. 39, 451 A.2d 434, 440 (1982); *Singzon*, 436 A.2d at 127–28. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. *John G. Bryant Co.*, 369 A.2d at 1167–71; *Albee Homes, Inc. v. Caddie Homes, Inc.*, 417 Pa. 177, 207 A.2d 768, 771–73 (1965). Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not

adversely affect the public interest. *Maritrans GP*, 602 A.2d at 1283; *Philadelphia v. District Council 33, AFSCME*, 528 Pa. 355, 598 A.2d 256, 260–61 (1991).

Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1001 (Pa. 2003).

ISSUES PRESENTED:

1. WHETHER PLAINTIFF HAS ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO LOSS OF BUSINESS REPUTATION.
2. WHETHER PLAINTIFF HAS ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO A POTENTIAL EVICTION OF PLAINTIFF FROM THE PREMISES.

RESPONSE TO ISSUES PRESENTED:

1. PLAINTIFF HAS NOT ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO LOSS OF BUSINESS REPUTATION, SINCE ANY CLAIMED DAMAGE TO PLAINTIFF’S BUSINESS REPUTATION HAS ALREADY OCCURRED, AND THUS MUST BE THE SUBJECT OF AN ACTION AT LAW FOR MONEY DAMAGES.
2. PLAINTIFF HAS NOT ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO A POTENTIAL EVICTION OF PLAINTIFF FROM THE PREMISES, SINCE THERE IS NO EVIDENTIARY BASIS FOR A FINDING THAT EVICTION IS IMMINENT.

DISCUSSION:

1. PLAINTIFF HAS NOT ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO LOSS OF BUSINESS REPUTATION, SINCE ANY CLAIMED DAMAGE TO PLAINTIFF’S BUSINESS REPUTATION HAS ALREADY OCCURRED, AND THUS MUST BE THE SUBJECT OF AN ACTION AT LAW FOR MONEY DAMAGES.

Both Plaintiff and the City contend that Defendants have been dilatory in establishing required sprinkler protection at the buildings at the Premises. Plaintiff further contends that statements made by Defendants (and reported by local media) in connection with the Eviction Notice have had a defamatory effect upon the business operations of the Plaintiff. While Plaintiff may establish those facts in support of its claim for money damages, it does not

presently provide the Court with the basis for a preliminary injunction. *See Hanna v. Hornung*, 281 A.3d 1083, 2022 WL 2254622, at *8 (Pa. Super. Ct. 2022), *reargument denied*, 281 A.3d 1083 (Pa. Super. Ct. 2022)(unpublished memorandum)(“[Plaintiff’s] claims that [Defendants’] actions harmed its overall goodwill and reputation in the Pittsburgh market were based upon vague, speculative testimony and were properly rejected by the trial court.”)(citations omitted); *see also Cipollone v. Mueller*, 299 A.3d 923, 2023 WL 3613354, at *3 (Pa. Super. Ct. 2023)(unpublished memorandum)(opining that while Plaintiff alleged that Defendant made defamatory statements resulting in damage to Plaintiff’s reputation, the “damage has already been done,” and that “damage to reputation is compensable at law with money damages.”)(citations omitted). Simply stated, any damage claimed by the Plaintiff has been done, and the Court is powerless to turn back time.

2. PLAINTIFF HAS NOT ESTABLISHED A BASIS FOR ISSUANCE OF A PRELIMINARY INJUNCTION RELATED TO A POTENTIAL EVICTION OF PLAINTIFF FROM THE PREMISES, SINCE THERE IS NO EVIDENTIARY BASIS FOR A FINDING THAT EVICTION IS IMMINENT.

Counsel for Defendants contends that any breach of Plaintiff’s lease could simply be the subject of a claim for money damages. There can be little doubt that immediate enforcement of the Eviction Notice would have a profound negative effect upon the Plaintiff and the dozens of other tenants at the Premises. At least some of those negative effects could not be easily remedied in money damages. Relocation of a small business requires that the owner notify customers and clients of the new location, establish telephone and utility services, relocate staff, and arrange relocation of furniture, equipment, computer facilities and the like. Requiring dozens of small businesses at a single location to all do so immediately would obviously be very disruptive. The Court notes that the Premises is particularly appealing to small or solely owned businesses. Immediate relocation might prove fatal to a small business operated by an individual with limited resources.

The Court concludes that Plaintiff’s concern is reasonable. The Court’s difficulty with Plaintiff’s Petition is that the claimed harm is not immediate. Plaintiff presented no evidence that the Plaintiff is in imminent threat of eviction. In fact, there is significant evidence to the

contrary. Defendants have filed and prosecuted an appeal. Defendants are hopeful that they can negotiate a “middle ground” with the City. Defendants have established a fire watch service and have not indicated any intention to terminate it. While the day may come when the tenants at the Premises are forced to relocate, there is no evidentiary basis for the conclusion that they are required to do so now.

ORDER

AND NOW, this 11th day of October, 2024, for the reasons more fully set forth above, Plaintiff's Petition seeking a Preliminary Injunction is dismissed without prejudice. Nothing set forth herein is intended to prevent Plaintiff from re-filing the Petition, if future events support the conclusion that Plaintiff is in imminent threat of wrongful eviction from the Premises.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
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