

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DDI ARCHITECTS, P.C. : CIVIL ACTION
v. :
EDGAR DALE and :
MARS 2112 GLOBAL, LTD. and :
MARS 2112 WOODFIELD :
CORPORATION : NO. 00-3262

MEMORANDUM AND ORDER

ROBERT F. KELLY, J. JULY , 2000

On February 28, 2000, Plaintiff DDI Architects, Inc. (“DDI”) sought a Temporary Restraining Order and Preliminary Injunction to prevent Edgar Dale and Mars 2112 Global Limited and Mars 2112 Woodfield Corporation (hereinafter “Mars Group”) from using DDI’s design drawings. The original request for injunctive relief was heard by the Honorable John R. Padova, of this Court, at Docket No. 00-cv-973.

On May 2, 2000, a final settlement was reached with the assistance of Judge Padova. The terms of the settlement called for certain issues to be arbitrated through a common law arbitration panel within sixty (60) days of May 2, 2000. On May 2, 2000, Judge Padova entered an Order dismissing action number 00-cv-973 with prejudice.

On June 14, 2000, the Mars Group filed a counterclaim in the arbitration pending before the American Arbitration Association (“AAA”). The AAA counterclaim sets forth claims against DDI which, it alleges, constitute a breach of fiduciary duty, defamation, tortuous interference with contract and business relations among others.

On June 23, 2000, DDI filed a verified Petition to Stay Arbitration in the Court of Common Pleas of Philadelphia County at Docket No. 002861, seeking to have the AAA counterclaim permanently dismissed from the AAA proceedings, without prejudice to the Mars Group submitting those claims to a separate Court of competent jurisdiction.

On June 26, 2000, DDI filed a Motion for a Temporary Restraining Order and Preliminary Injunction with the CCP Philadelphia, at Docket No. 002861, seeking an Order enjoining any proceedings on the AAA counterclaim asserted by the Mars Group so that the AAA arbitration could proceed as scheduled without the counterclaim being heard. On June 26, 2000, Judge Wolf of CCP Philadelphia denied DDI's request for a Temporary Restraining Order and scheduled this matter for a hearing on a Preliminary Injunction for Friday, June 29, 2000.

On June 27, 2000, this matter was removed from CCP Philadelphia to this Court.

DDI contends that it was fundamental to the May 2, 2000 agreement to arbitrate, that a hearing be held within sixty (60) days of May 2, 2000, and that a final decision within ten (10) days thereafter be rendered. It further contends that the injection of the counterclaim issues, which were not part of the arbitration agreement, will inevitably result in a delayed hearing schedule, which it claims was a fundamental reason for the agreement to arbitrate. The ultimate question, therefore, is whether the counterclaim is a proper part of the arbitration process agreed to on May 2, 2000. The immediate question before this Court is whether or not DDI is entitled to a Preliminary Injunction prohibiting the Mars Group from pursuing any counterclaim in proceedings before the AAA.

DISCUSSION

In the case of Campbell Soup Co. v. ConAgra, Inc., 977 F.2d 86, 90-91 (3rd Cir. 1992),

the Court stated:

“In order to support a preliminary injunction, plaintiff must show both a likelihood of success on the merits and a probability of irreparable harm. Additionally, the district court should consider the effect of the issuance of a preliminary injunction on other interested persons and the public interest...” [quoting Bradley v. Pittsburgh Bd. Of Educ., 910 F.2d 1172, 1175 (3d Cir. 1990).]

[A] showing of irreparable harm is insufficient if the harm will occur only in the indefinite future. Rather, the moving party must make a “clear showing of *immediate* irreparable harm.” [quoting Hohe v. Casey, 886 F.2d 69, 72 (3d Cir.), cert denied, 493 U.S. 848 (1989).]

Perhaps the single, most important prerequisite for issuance of a Preliminary Injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered. Only when the threatened harm would impair the Court’s ability to grant an effective remedy is there a need for preliminary relief. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2948.1.

In the present case, Plaintiff DDI was the original architect on a project for the construction of a restaurant. Plaintiff was replaced as the architect on that project and construction continued under a new architect. Plaintiff contends that a similar project by the Mars Group, in the past, resulted in lawsuits by the members of the public using the premises because of faulty construction. Plaintiff further argues that the prompt arbitration proceeding is necessary in order to relieve it from any possible liability for lawsuits filed by members of the public using the restaurant in question.

There must be a likelihood that the harm complained of will occur. Speculative injury is not a sufficient basis for the issuance of a preliminary injunction. Acierno v. New Castle County,

40 F.3d 645 (3d Cir. 1994). Furthermore, a preliminary injunction usually will be denied if it appears that the applicant has an adequate alternative remedy in the form of money damages. A.L.K. Corporation v. Columbia Pictures Indus., Inc., 440 F.2d 761 (3d Cir. 1971). In the present case, the alleged damages are speculative, if damages result, they can be compensated for by a monetary award and, lastly, the only testimony in the case on the issue of when this construction would be completed and the restaurant opened to the public indicated a completion date of September of the year 2000.

For the above reasons, the Preliminary Injunction will be denied. An appropriate Order follows.

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O R D E R

AND NOW, this day of JULY, 2000, for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that the Motion of Plaintiff DDI Architects, P.C. for a Preliminary Injunction is DENIED.

BY THE COURT:

ROBERT F. KELLY, J.