

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

PREMIER SYSTEMS CONSULTANTS, LTD. : CIVIL ACTION
 :
 v. :
 :
 GINA MAHIN & BAYSTATE COMPUTER GROUP & :
 RON PETRANY & CHRISTINE CRUGNALE : NO. 99-2660

MEMORANDUM AND ORDER

HUTTON, J.

DECEMBER 14, 1999

Currently before the Court are Premier Systems Consultants, Ltd.'s ("Petitioner" or "Premier") Petition for Special Relief (Docket No. 5), Gina Mahin ("Mahin"), Baystate Computer Group ("Baystate"), Ron Petrany ("Petrany"), and Christine Crugnale's ("Crugnale") Response thereto (collectively, the "Defendants") (Docket No. 6), Petitioner's Memorandum of Law in Support of Petition for Special Relief (Docket No. 8), and Defendants' Reply thereto (Docket No. 9). For the reasons stated hereafter, Petitioner's Petition for Special Relief is DENIED.

I. BACKGROUND

Premier filed suit against Defendants on April 26, 1999, in Pennsylvania state court. Plaintiff states four causes of action: (1) breach of fiduciary duty; (2) conversion; (3) disparagement; and (4) interference with business relations. Defendants removed Plaintiff's case to federal court on May 24, 1999.

Petitioner filed the instant Petition for Special Relief on June 16, 1999,¹ requesting that Defendants return certain materials and information, account for information taken and/or deleted, assist Petitioners in recovering or "undeleting" material expunged from Petitioner's hard drives, cease approaching Petitioner's customers and prospective customers for whom Petitioner was preparing projects, terminate all relations with Petitioner's customers, and cease making defamatory statements about Petitioner. The individual Defendants Mahin, Petrany, and Crugnale are former employees of Plaintiff who presumably now work for Baystate. (See Pet. for Special Relief at 4).

The Petition fails to identify both the authority under which Special Relief should be granted and whether preliminary or permanent relief is sought. While the standards for a permanent and preliminary injunctions are essentially the same, petitioner must show actual success on the merits rather than a likelihood of success to obtain a permanent injunction. See, e.g., University of Texas v. Camenisch, 451 U.S. 390, 392, 101 S. Ct. 1830 (1981). Petitioner's Memorandum of Law equivocally indicates that

¹ Petitioner's June 16, 1999, filing failed to comply with Local Rule 7.1(c) which provides in pertinent part that "[e]very motion not certified as uncontested ... shall be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of their motion." E.D. Pa. R. Civ. P. 7.1(c). Plaintiff's motion was neither uncontested nor accompanied by a brief and was therefore procedurally deficient. Petitioner also failed to comply with Local Rule 7.1(a) which provides in pertinent part that "[e]very motion shall be accompanied by a form of order, which, if approved by the Court, would grant the relief sought by the motion." E.D. Pa. R. Civ. P. 7.1(a). Petitioner did not include a form of order with its Petition. On August 3, 1999, Petitioner filed a Memorandum of Law in Support of Petition for Special Relief but failed to file a form of order. In light of these conspicuous procedural defects, the Court will consider the instant Petition.

preliminary injunctive relief is sought as it states that the Court must determine "whether the movant demonstrated a reasonable probability of success on the merits." (Pl.'s Mem. of Law at 2 (emphasis added)). As such, the Court treats the instant Petition for Special Relief as one which seeks preliminary injunctive relief.²

II. DISCUSSION

A. Standard for a Preliminary Injunction

The framework for analyzing a request for injunctive relief at the preliminary stages of litigation rests upon two fundamental principles: a preliminary injunction constitutes extraordinary relief and the grant or denial of such relief is within the discretion of the court. See generally Bell & Howell Document Management Prods. Co. v. Altek Sys., 132 F.3d 701, 704 (Fed. Cir. 1997). These underpinnings are not absolute, however, and the court's discretion "must be measured against the standards governing the issuance of an injunction." Hybritech Inc. v. Abbot Labs., 849 F.2d 1446, 1451 (Fed. Cir. 1988).

The issuance of a preliminary injunction is governed by Rule

² Although certain forms of relief prayed for by Petitioner are beyond the scope of injunctive relief (e.g., assistance in "undeleting" information), Petitioner fails to address the appropriate standards for determining whether such relief is appropriate. The Court therefore reads the instant Petition as one which seeks only injunctive relief.

65 of the Federal Rules of Civil Procedure.³ Fed. R. Civ. P. 65. Nevertheless, under controlling case law, to obtain a preliminary injunction, a petitioner must show (1) irreparable injury, (2) a reasonable probability of success on the merits, (3) the harm to it outweighs the possible harm to other interested parties, and (4) harm to the public. Pappan Enters., Inc. v. Hardee's Food Systems, Inc., 143 F.3d 800, 803 (3d Cir.1998).

A petitioner must demonstrate that an injunction from a federal court is the only adequate remedy and that there is no adequate remedy at law. See Thornock v. Kinderhill Corp., 702 F. Supp. 468, 471 (S.D.N.Y. 1988). Accordingly, if an adequate remedy at law exists, equitable relief will not be granted. See O'Shea v. Littleton, 414 U.S. 488, 499 (1974); Iacona v. United States, 343 F. Supp. 600, 603 (E.D. Pa. 1972).

A showing of success on the merits⁴ and irreparable harm⁵ are

³ It must be noted that Rule 65 "does not make a hearing a prerequisite for ruling on a preliminary injunction . . . when the movant has not presented a colorable factual basis to support . . . the contention of irreparable harm." Bradley v. Pittsburgh Bd. of Educ., 910 F.2d 1172, 1175-76 (3d Cir. 1990). The Bradley court stated that "a district court is not obliged to hold a hearing when the movant has not presented a colorable factual basis to support the claim on the merits or the contention of irreparable harm." Id. at 1176.

⁴ When determining whether a petitioner has shown that it is likely to succeed on the merits of its case, the existence of factual conflict may create a substantial doubt about the petitioner's probability of success, thereby justifying denial of its preliminary injunction petition. See Sovereign Order of Saint John of Jerusalem-Knights of Malta v. Messineo, 572 F. Supp. 983, 990 (E.D. Pa. 1983); see also Forrest v. Nedab, No. CIV.A.97-4442, 1999 WL 552546, at *4 (E.D. Pa. June 29, 1999) (same).

⁵ The Third Circuit has repeatedly emphasized "the elementary principle that a preliminary injunction shall not issue except upon a showing of irreparable injury." National Land & Investment Co. v. Specter, 428 F.2d 91, 97 (3d Cir. 1970); see also A.O. Smith Corp. v. FTC, 530 F.2d 515, 525 (3d Cir. 1976). In order to demonstrate irreparable harm, a petitioner must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. Campbell

requisite the grant of a preliminary injunction. See McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 523 (3d Cir. 1994). In the absence of such a showing, a district court may not grant the requested injunctive relief. See id.

B. Petitioner's Request for Preliminary Injunctive Relief

Petitioner argues that the actions of Defendants has caused the following injuries: (1) adverse affect on its business relationships with present and potential customers; (2) serious damage to it business reputation in the industry; (3) loss of proprietary programming and proposals; (4) loss of one customer; and (5) inability to reconstruct billings and/or projects in progress and/or projects being prepared for submission because such information, that was being stored in its computers was deleted. (See Mem. of Law).

As stated above, the Court employs a four-part analysis to determine whether Petitioner is entitled to the extraordinary remedy of injunctive relief. As to the first factor of probability

Soup Co. v. Conagra, Inc., 977 F.2d 86, 91 (3d Cir. 1992). The moving party must make a "clear showing of immediate irreparable harm." Hohe v. Casey, 868 F.2d 69, 72 (3d Cir.), cert. denied, 493 U.S. 848, 110 S. Ct. 144 (1989)(internal quotation omitted). The preliminary injunction must be the only way of protecting the plaintiff from harm. See, e.g., Weinberger v. Romero-Barcelo, 456 U.S. 305, 102 S. Ct. 1798 (1982); Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 801 (3d Cir. 1989); Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 356 and n.9 (3d Cir. 1980). In ECRI v. McGraw-Hill, Inc., 809 F.2d 223 (3d Cir. 1987), the Third Circuit stated that establishing a risk of irreparable harm is not enough. Id. at 226. A plaintiff has the burden of proving a clear showing of immediate irreparable injury. Id. (citation omitted). The requisite feared injury or harm must be irreparable--not merely serious or substantial, and it must be of a peculiar nature, so that compensation in money cannot atone for it. Id. (citation omitted).

of success on the merits, the Petition is silent. Petitioner's Memorandum of Law, on the other hand, makes a meager attempt to show probable success on the merits. Petitioner states that

Premier has a meritorious claim, has inventory of the missing items, and will present the testimony of several contacts of its customers attesting to the fact that such statements were made concerning Premier by Mahin. There is a strong likelihood of success on the merits.

(Mem. of Law at 3). This conclusory statement is Petitioner's only proof of probable success on the merits. Petitioner fails to provide the inventory of the missing items, affidavits of employees, and/or affidavits of "several contacts of its customers attesting to the fact that [allegedly defamatory] statements were made concerning Premier by Mahin." Ultimately, the Court, in its discretion, could grant the relief requested in reliance on this statement but in the absence of any proof whatsoever, the Court declines to do so.⁶ Petitioner does not prove probable success on the merits.

In an attempt to show irreparable injury, Petitioner's Memorandum of Law makes the following bald assertions: (1) Premier has lost one customer; (2) due to its loss of proprietary programming and proposals, "business is lost, often forever," in [Premier's] industry if "the proponent of the solutions for a particular customer cannot timely remedy their situation;" (3) it

⁶ The dearth of facts provided by Petitioner does not allow the Court to proceed so far as to determine whether a factual conflict actually exists. See Forrest v. Nedab, No. CIV.A.97-4442, 1999 WL 552546, at *4 (E.D. Pa. June 29, 1999). Accordingly, probable success on the merits is not evidenced.

will suffer "serious harm because of its inability to deliver projects in progress, to make willing on work done and in progress, and to solicit prospective customers with whom it has already agreed to present proposed projects;" (4) "[o]nce its ability to compete its presentations or deliver on its promises are destroyed, the [Premier] will never recover the loss of its reputation for excellent service to its customers;" and (5) Mahin's defamatory statements have injured and will continue to injure the Petitioner's reputation in the business community in which it operates." (Mem. of Law at 3-4 (emphases added)).

Petitioner provides no facts to support its claims of injury although it is Petitioner's burden of making a clear showing of irreparable injury.⁷ See ECRI v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987). Moreover, Petitioner's claims of injury, by the language expressly used by Petitioner to describe such injury, do not appear to be of an "irreparable" character. Petitioner thus fails to make a "clear showing of immediate irreparable harm." See Hohe v. Casey, 868 F.2d 69, 72 (3d Cir. 1989). Indeed, Petitioner's claims expressly demonstrate that Premier is simply at the risk of harm (e.g., it may lose business, it may suffer reputational loss, it may have a lessened ability to compete in the

⁷ Respondent poses an interesting argument in that it strains credulity for Petitioner to claim irreparable harm when it failed to seek injunctive relief until several months after filing its Complaint and then waited several more months to correct the procedural defects of its Petition for Special Relief (the Court notes that said attempt at correction was inadequate). (See Def.s' Reply to Pl.'s Mem. of Law in Supp. of its Pet. for Special Relief at 4).

marketplace, etc.). Under Third Circuit jurisprudence, "risk of harm" simply does not equate to "irreparable injury." See ECRI v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987). Accordingly, Petitioner fails to carry its burden as to showing irreparable injury.

As Petitioner fails to make the requisite showing of success on the merits and irreparable harm, the Court may not grant the requested injunctive relief. See McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 523 (3d Cir. 1994). Petitioner's Petition for Special Relief is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of December, 1999, upon consideration of Petitioner Premier Systems Consultants, Ltd.'s ("Petitioner") Petition for Special Relief (Docket No. 5), Defendants Gina Mahin, Baystate Computer Group, Ron Petrany, and Christine Crugnale's Response thereto (collectively, the "Defendants")(Docket No. 6), Petitioner's Memorandum of Law in Support of Petition for Special Relief (Docket No. 8), and Defendants' Reply thereto (Docket No. 9), IT IS HEREBY ORDERED that Petitioner's Petition for Special Relief is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.