

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

LEO'S CONEY ISLAND FRANCHISING
COMPANY,

Plaintiff,

v

Case No. 14-142622-CK
Hon. Wendy Potts

MILFORD CONEY PRT, LLC, et al,

Defendants.

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE
ORDER AND APPOINTMENT OF RECEIVER

At a session of Court
Held in Pontiac, Michigan
On

SEP 24 2014

Plaintiff Leo's Coney Island Franchising Company entered into franchising agreements with Defendants Milford Coney PRT, LLC and Leo's Sylvan Lake, Inc. to allow Defendants to operate Leo's Coney Island restaurants. Plaintiff claims that Milford and Sylvan breached their franchise agreements by failing to pay royalties and franchise fees. Plaintiff notified Milford and Sylvan of their defaults and termination of their franchise agreements, however, it claims that Defendants have not cured the defaults and continue to operate as Leo's restaurants.

Plaintiff now asks the Court to enjoin Defendants from continuing to hold themselves out as Leo's Coney franchises and using Plaintiff's trademarked systems. When deciding a motion for injunctive relief, the Court considers (1) whether the applicant will suffer irreparable injury if the injunction is not granted; (2) the likelihood that the applicant will succeed on the merits; (3)

whether harm to the applicant in the absence of relief outweighs the harm to the opposing party if the injunction is granted; and (4) the harm to the public if the injunction issues. *Thermatool Corp v Borzym*, 227 Mich App 366, 376 (1998). The Court should also consider whether granting an injunction is necessary to preserve the status quo before a final hearing or whether it will grant one of the parties final relief before a decision on the merits. *Thermatool, supra*.

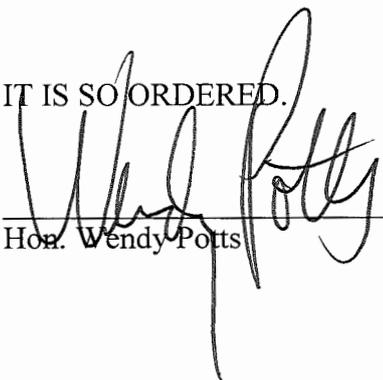
Based on the evidence presented, Plaintiff has a likelihood of success on the merits because there does not appear to be any factual dispute that Defendants breached the franchise agreement. Plaintiff also demonstrated irreparable injury through loss of customer goodwill and possible damage to its brand and marks. The harm to Plaintiff appears to outweigh any harm to Defendants, and the public has no apparent interest in this private dispute. For all of these reasons, the Court grants the request for injunctive relief and will enter Plaintiff's proposed order.

Plaintiff also asks the Court to appoint a receiver to ensure that Defendants comply with the Court's injunction, cease operating the franchises, and do not violate their noncompete. However, appointing a receiver is a harsh remedy which should happen only in the face of strong evidence of harm. *Band v Livonia Associates*, 176 Mich App 95, 105; 439 NW2d 285 (1989). If Defendants comply with the injunction, Plaintiff will not suffer any further harm and a receiver is unnecessary. Thus, appointing a receiver is premature and the Court denies the request without prejudice. If Defendants fail to promptly comply with the injunctive order, Plaintiff may renew its request for a receiver.

Dated:

SEP 24 2014

IT IS SO ORDERED.


Hon. Wendy Potts