STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

J.K. POOLS, INC. and
CHERYL KARALLA,

Plaintiffs,

vs. Case No. 2015-1557-CB

JOSEPH J. KARALLA, JR.,

Defendant.
_____/

OPINION AND ORDER

Plaintiffs have filed a motion for a temporary restraining order and preliminary injunction. Defendant has filed a response and requests that the motion be denied.

I. Factual and Procedural History

Plaintiff Cheryl Karalla ("Plaintiff") and Defendant are former husband and wife. On March 2, 2010, a judgment of divorce ("Divorce Judgment") was entered following a bench trial conducted in connection with the parties' divorce. Pursuant to the Divorce Judgment, Plaintiff and Defendant remained 50-50 shareholders in Plaintiff J.K. Pools, INC. ("Plaintiff Pools").

On May 7, 2015, Plaintiffs filed their verified complaint in this matter ("Verified Complaint"). In the Verified Complaint, Plaintiff asserts claims individually, as well as derivatively, on behalf of Plaintiff Pools, against Defendant. Specifically, the Verified Complaint contains the following claims: Count I- Breach of Agreement (Brought by Plaintiff), Count II- Breach of Fiduciary

Duty (Brought by Plaintiff and Plaintiff Pools), Count III- Unjust Enrichment (Brought by Plaintiff Pools), Count IV- Fraud and Misrepresentation (Brought by Plaintiff), Count V- Conversion (Brought by Plaintiff Pools), Count VI- Accounting (Brought by Plaintiff), and Count VIII- Injunctive Relief (Brought by Plaintiff and Plaintiff Pools).

In addition to requesting injunctive relief in the Verified Complaint, Plaintiffs have also filed a separate brief in support of their request for injunctive relief. Defendant has filed two briefs in response to the motion. On June 18, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

"[I]njunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." discretion. *Pontiac Fire Fighters Union Local 376 v City of Pontiac,* 482 Mich 1, 8; 753 NW2d 595 (2008). (citation and internal quotation marks omitted). Pursuant to a longstanding principle, "a particularized showing of irreparable harm ... is ... an indispensable requirement to obtain a preliminary injunction." *Id* at 9 (citation and internal quotation marks omitted). Accordingly, "a preliminary injunction should not issue where an adequate legal remedy is available." *Id.* "[T]he three additional factors in a preliminary injunction analysis are (1) whether harm to the applicant absent an injunction outweighs the harm it would cause to the adverse party, (2) the

strength of the moving party's showing that it is likely prevail to on the merits, and (3) harm to the public interest if an injunction is issued." *Id.* at 6 n 6.

III. Arguments and Analysis

In their motion, Plaintiffs requests that the Court order that the proceeds of the sale of certain marital property continue to be held in escrow pending the resolution of this matter. Specifically, Plaintiffs' motion addresses $103,516.29 presently being held in Plaintiffs' counsel's IOLTA account. It appears undisputed that Defendant is entitled to $36,164.21 of funds, with Plaintiff being entitled to remaining $67,352.08. Despite conceding that Defendant is entitled to a portion of the funds, and despite the fact that the proceeds come from the sale of property not at issue in this matter, Plaintiffs contend that they are entitled to an order preventing disbursement of the funds in order to maintain status quo.

In this case, Plaintiffs contend that they will be irreparably harmed without injunctive relief because Defendant is actively using corporate assets for his own gain and in a manner that excludes Plaintiff. However, Plaintiffs have failed to support his position in any way. A party may not merely state a position and then leave it to the Court to rationalize and discover the basis for the claim, nor may he leave it to the Court to search for authority to sustain or reject his position. *People v Mackle,* 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000). Based on Plaintiffs' failure to support his position, Plaintiffs' assertion is properly denied.

Moreover, the relief Plaintiffs seek in connection with their instant motion is intended to secure a pool of money for a potential future judgment. However, "[a] preliminary injunction should not issue where an adequate legal remedy is

available." *Pontiac Fire*, 482 Mich at 9. In this case, an adequate remedy at law, i.e. monetary damages, will be available in the event that Plaintiffs prevail in connection with their claims. For this reason, the Court is convinced that Plaintiffs have failed to establish that irreparable harm will be caused if the funds being held in Plaintiffs' counsel's IOLTA account are dispursed. Consequently, Plaintiff has failed to establish an indispensible prerequisite for obtaining a preliminary injunction. *Pontiac Fire*, 482 Mich 8. Accordingly, Plaintiff's motion must be denied.

Finally, Plaintiffs contend that a Court may enter an injunction maintaining the status quo where it is needed to prevent serious inconvenience and loss to the moving party. In support of their position, Plaintiffs rely on *Gates v Detroit & Mackinac Railway Co*, 151 Mich 548; 115 NW 420 (1908), and *Steggles v Natl Disc Corp*, 326 Mich 44; 39 NW2d 237 (1949).

In *Gates*, the plaintiff sought to prevent the defendant from breaching a contract that the parties had be operating under for seven years. Under the contract, the plaintiff was permitted to utilize a train track on defendant's property in order to transport its lumber closer to plaintiff's mill. In granting plaintiff a preliminary injunction, the Michigan Supreme Court held that "the preliminary injunction only preserves the status quo which had existed for seven years." *Id.* at 552. The Court went on to note that plaintiff would be entitled to a permanent injunction incorporating the same terms if it prevailed on its claims. *Id.* Further, the Court reasoned that the preliminary injunction would cause defendant little

harm, whereas denying the motion would cause plaintiff "serious if not irreparable harm."

In *Steggles*, the plaintiff sought a permanent injunction ordering defendant to return a vehicle it had repossessed from him. In affirming the trial court's decision to enter an injunction ordering the defendant to return the vehicle, the Court reasoned plaintiff would be seriously inconvenienced without the vehicle as it was his only mode of transportation, whereas defendant would not suffer any serious inconvenience. *Id.* at 51.

In this case, unlike in *Gates* and *Staggles*, Plaintiffs have not demonstrated that they be seriously inconvenienced if their request for injunctive relief is denied. Rather, Plaintiffs appear to be merely attempting to freeze some of Defendant's assets in an effort to secure a potential future judgment. Accordingly, this matter is easily distinguishable from the situations presented by *Gates* and *Staggles*. Consequently, Plaintiffs' reliance on those decisions is misplaced.

IV. Conclusion

Based upon the reasons set forth above, Plaintiffs motion for a preliminary injunction is DENIED. Further, Plaintiffs' counsel shall distribute the $103,516.29 at issue to Plaintiff and Defendant. Specifically, Plaintiffs' counsel shall distribute $36,164.21 to Defendant within seven (7) days of the date of this Opinion and Order. The remainder shall be distributed to Plaintiff within seven (7) days of the date of this Opinion and Order. In compliance with MCR 2.602(A)(3), the Court

states this *Opinion and Order* does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: SEP 23 2015

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge