

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

CET PHARMACY GRAND RAPIDS, LLC,
a Michigan limited liability company;
LIVE LIFE HOME HEALTHCARE, LLC,
a Michigan limited liability company; and
LIVE LIFE SERVICES, LLC, a Michigan
limited liability company,

Case No. 14-04477-CKB

HON. CHRISTOPHER P. YATES

Plaintiffs,

vs.

JOSEPH YOUNG a/k/a Luke Young, an
individual,

Defendant.

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND
DENYING DEFENDANT'S MOTION FOR PRELIMINARY INJUNCTION

The Court's role in this case requires facilitation of the departure of Defendant Joseph Young from three closely held limited liability companies and determination of any damages owed to those companies as a result of Young's recent activities. As often occurs in business divorces, the parties have opened this case with a flurry of motions to enjoin one another from taking actions perceived to undermine the business interests of the movant. The Court has already denied a motion from the plaintiffs to enjoin Young from competing with the companies, see Opinion and Order Dissolving Temporary Restraining Order and Denying Plaintiffs' Motion for Preliminary Injunction (June 12, 2014), and Young now requests an injunction prohibiting the plaintiff corporations from issuing a capital call to their members. Based upon a review of the evidence and arguments presented by the parties, the Court concludes that Young's request for injunctive relief must be denied.

Tarek Mazloun, Chadi Azzi, Eddy Aoun, and Defendant Young share equal membership in the three plaintiff limited liability companies. On July 16, 2014, Mazloun, Azzi, and Aoun directed the three companies to issue notices of a capital call to Young, which required Young to contribute a total of \$125,000 to the companies by August 15, 2014. Young responded by immediately seeking a temporary restraining order and preliminary injunction barring the three companies from issuing a capital call. Young contends that the three companies improperly issued the capital call because the three companies did not follow the procedures required by their operating agreements. Further, Young argues that the capital call amounts to willfully unfair and oppressive conduct because he is the only member that will presently be required to furnish money to meet the capital call. The parties stipulated to the entry of a temporary restraining order that extended the capital-call deadline until August 25, 2014, and the Court extended that temporary restraining order until September 2, 2014. Now, after evaluating Young's motion for preliminary injunctive relief, the Court must dissolve the temporary restraining order and permit the capital call to proceed.

An injunction “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” Davis v Detroit Financial Review Team, 296 Mich App 568, 613 (2012). Defendant Young seeks injunctive relief, so he must bear “the burden of establishing that a preliminary injunction should be issued.” MCR 3.310(A)(4). Our Court of Appeals “has identified four factors to consider in determining whether to grant a preliminary injunction.” Davis, 296 Mich App at 613. Those four factors are as follows:

- (1) the likelihood that the party seeking the injunction will prevail on the merits,
- (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued,
- (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and
- (4) the harm to the public interest if the injunction is issued.

Id. In analyzing these four considerations, the Court must bear in mind that injunctive relief is only appropriate if “there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” Id. at 614 (internal quotations omitted).

In this case, Defendant Young has shown that he is likely to succeed on the merits of a claim that CET Pharmacy Grand Rapids, LLC (“CET Pharmacy”) failed to follow the proper procedures for issuing a capital call. The CET Pharmacy operating agreement allows a majority of the members to formally make a capital call, see Defendant’s Brief Supporting Motion for Preliminary Injunction Concerning Plaintiffs’ Improper Capital Calls, Exhibit D (Operating Agreement for CET Pharmacy Grand Rapids, LLC, § 2.2(A)), but any action requiring a vote of the members must be taken either at a meeting attended by all of the members or pursuant to the written consent of all of the members. See id., § 5.2 (A) & (B). Here, a majority of the members issued the capital call, see id., Exhibit B (Notice of Required Additional Capital Contribution to CET Pharmacy Grand Rapids, LLC), but the members failed to present the matter for a vote at a member meeting attended by all four members or to obtain written consent from all of the members for the capital call. Thus, Defendant Young is likely to succeed on the merits of his claim that the other members of CET Pharmacy breached the operating agreement by issuing the capital call without a meeting of the members.*

Defendant Young also asserts that the capital call amounts to willfully unfair and oppressive conduct. See MCL 450.4515(1). Although the operating agreement for CET Pharmacy permits a majority of the members to issue capital calls, that does not authorize a majority of the members to act in a manner that is willfully unfair and oppressive to Young, as a minority member. See Berger

* Defendant Young did not submit the operating agreements for Plaintiffs Live Life Home Healthcare, LLC, or Live Life Services, LLC, so the Court cannot determine whether the proper procedure was followed for issuing the capital calls for those companies.

v Katz, No 291663, slip op at 5 (Mich App July 28, 2011) (unpublished decision). Young contends that the capital call is oppressive because, under its terms, he is the only member presently required to contribute capital to the companies. The other members assert that they already contributed their shares of capital to keep the companies afloat during the first half of 2014, so they are not engaging in oppressive conduct simply by voting to require Young to contribute his fair share of capital. In order to evaluate Young's counterclaim for minority oppression (which has not yet been properly pleaded), the Court must obtain evidence regarding the companies' financial status. The parties are not yet in a position to present such evidence, so the Court cannot yet evaluate Young's likelihood of success on his pending counterclaim for minority oppression.

Despite the strength of at least one of Defendant Young's counterclaims, he has not met his burden of showing that he will be irreparably harmed absent injunctive relief. First, the companies would have issued the capital call even if the proper procedure had been followed because Mazloun, Azzi, and Aoun all favor the capital call and the decision to issue a capital call requires approval by a simple majority of the four members. See Defendant's Brief Supporting Motion for Preliminary Injunction Concerning Plaintiffs' Improper Capital Calls, Exhibit D (Operating Agreement for CET Pharmacy Grand Rapids, LLC, § 2.2(A)). Second, in the absence of the injunctive relief he seeks, Young can simply refuse to meet the capital call, and the Court can thereafter remedy any improper dilution of his membership interests with an award of damages. Because Young has a remedy at law, the Court cannot issue a preliminary injunction. See Davis, 296 Mich App at 614.

Finally, both the balance of the harms and consideration of the public interest militate against injunctive relief. If the Court refuses to enter the injunction, Defendant Young may refuse to honor the capital call and choose to rely on a remedy at law or suffer the consequences under the operating

agreements if his counterclaims fail. In contrast, the plaintiffs contend that the companies will suffer catastrophic negative cash flow if the Court enjoins the capital call, which could put the companies at risk of running aground. Further, if the pharmacies are forced out of business for lack of adequate cash flow, the customers who rely on those pharmacies to fill prescriptions will be harmed. Thus, the balance-of-harms and public-interest factors tip decidedly in favor of the plaintiffs.

Based upon a careful analysis of the four factors that the Court must consider in determining whether to issue injunctive relief, the Court must deny Defendant Young's request for an injunction barring capital calls. Although the majority members did not follow the proper procedure for issuing a capital call, a majority of the members plainly would have voted in favor of issuing the capital call at a meeting of the members. And although Young may have a viable claim for minority oppression, see MCL 450.4515, he has not yet presented evidence to show that the capital call was issued merely as an effort to force him from the companies. Moreover, the Court may address any harm to Young by providing monetary damages. Finally, analysis of the balance of harms and consideration of the public interest both militate against injunctive relief. Therefore, the Court must dissolve the existing temporary restraining order and deny Young's request for a preliminary injunction barring issuance of a capital call.

IT IS SO ORDERED.

Dated: September 2, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge