

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation, et. al.,

Defendants/ Counter-Plaintiffs.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation

Defendants/Counter-Plaintiffs,

v.

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant.

Case No. **2023 CH 05147**

Judge Clare J. Quish

Cal. 14

Courtroom 2301

ORDER

This matter comes for hearing on September 9, 2024 on Counter-Plaintiff Village of Mount Prospect's Emergency Motion for Temporary Restraining Order and the Setting of a Preliminary Injunction Hearing filed on August 23, 2024 ("Village's Third Motion for TRO"); the Court having reviewed Village's Third Motion for TRO and Third Amended Verified Counterclaim as well Plaintiff's Memorandum Opposing Defendant's Third Motion for Temporary Restraining Order; the Court having heard argument from counsel for the parties and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. In May 2023, Plaintiff/Counter-Defendant Prestige Feed Products, LLC ("Prestige") filed its Verified Complaint for Declaratory Relief, Injunctive Relief, and for Damages against the Village of Mount Prospect ("Village"). Prestige alleged that it manufactured soy and cheese-based livestock feed, operating at 431 Lakeview Court in Mount Prospect. Prestige alleged that the Village threatened to revoke Prestige's business license and terminated their Tolling Agreement. Prestige also filed a Motion for Temporary Restraining order seeking to enjoin the Village from issuing a "cease and desist" order shutting down Prestige's operations on the basis that it was a nuisance.
2. At the June 7, 2023 hearing on Prestige's Motion for TRO, the parties resolved that motion by agreement. The parties agreed that Prestige would only operate its feed production equipment overnight, between the hours of 9 p.m. and 5 a.m. Prestige withdrew its Motion for TRO. Throughout the summer and fall of 2023, the parties continued litigating the case

while Prestige planned to install additional odor-control machinery which, the parties hoped, would resolve the ultimate dispute.

3. In August 2023, the Village filed a Verified Counterclaim for Injunctive Relief. On December 5, 2023, the Village sought leave to file an Amended Verified Counterclaim and filed its first Emergency Motion for TRO, seeking a temporary restraining order barring Prestige from operating until the Court could hear a motion for preliminary injunction, arguing that, from the beginning of Prestige's operations in March 2019, businesses and residents complained to the Village about noxious odors emanating from the facility. At the December 14 status, the Village agreed to withdraw its first Motion for TRO and to allow Prestige to operate its facility for additional hours, including daytime hours, from December 13, 2023 to January 8, 2024.
4. On April 8, 2024, the Village filed its second Motion for TRO, arguing that in February and March 2024, the Village received an increased number of complaints about odor from the Prestige facility. When the Village presented this second Motion for TRO on April 15, 2024, it was also granted leave to file its Second Amended Counterclaim.
5. The Village's Second Amended Counterclaim alleged it has received complaints about odors coming from the Prestige facility beginning in May 2019. The Village pled a single count labeled "Injunctive Relief." The Village sought "an order enjoining Prestige from operating the facility" until the odors emitted "have been eliminated based on the evaluation of an independent expert selected by both the Village and Prestige."
6. The parties agreed to a briefing schedule on the second Motion for TRO and set the hearing for May 9, 2024. The parties then agreed to reschedule that hearing to June 4, 2024. On that date, the Court granted in part and denied in part Prestige's Motion to Dismiss the Second Amended Counterclaim without prejudice. The Village withdrew its second Motion for TRO. The Village asked to file a Third Amended Verified Counterclaim by June 18. The Village then sought and obtained an extension of time in which to file that counterclaim until July 19, 2024. The Village filed this Third Motion for TRO on August 23, 2024.
7. In its Third Amended Verified Counterclaim, the Village alleges that Prestige began operating on March 19, 2019 and its operation "instantly caused a source of discomfort and a nuisance" to neighboring residents and businesses with a "persistent burnt, sometimes rancid, cheese odor" from Prestige's facility. The Village alleges that Prestige attempted to fix the issue, but the problem persisted and became worse. The Village alleges that Prestige applied for, and received, zoning for "Manufacturing, Light" use when it knew that its operation would be a Heavy Manufacturing use and that Prestige omitted key information from its application to the Village to obtain the Light Manufacturing approval. The Village alleges that it would have denied Prestige a building license if Prestige disclosed on its application that its plant would emit odors that carried beyond the facility and lot lines.
8. The Village alleges that since Prestige resumed full operations in December 2023, the Village has received an increased number of complaints and notices about noxious odors

from the facility. The Village details complaints it received from neighboring businesses and residents about the noxious odors from January through March 2024. The Village alleges several counts: Count I, Violation of Village Code §14.64; Count II, Violation of Village Code §14.2104(G)(6); and Count III, Common Law Public Nuisance. Each count seeks similar relief: to enjoin Prestige from operating (if not completely, then during normal business hours) unless and until it can come into conformance with the Village Code and not be a nuisance.

9. In its Third Motion for TRO, the Village argues that it has performed testing at and around Prestige's facility from December 2023 to August 21, 2024 which shows the facility emitting noxious odors. The Village seeks a TRO enjoining Prestige from operating until it can show that it can operate without violating the Village Codes and be a common law public nuisance.
10. A temporary restraining order is a drastic, emergency remedy which may issue only in exceptional circumstances and for a brief duration. *Abdulhafedh v. Secretary of State*, 161 Ill.App.3d 413, 416 (2d Dist. 1987). It is an extraordinary remedy which should apply only in situations where an extreme emergency exists and serious harm would result if the injunction is not issued. *Behringer v. Page*, 204 Ill.2d 363, 379 (2003); *In re Marriage of Eckersall*, 2014 IL App (1st) 132223, ¶21.
11. In this case, the Village has not met its burden of establishing that there is an extreme emergency justifying the extraordinary relief of a temporary restraining order requiring Prestige to cease operating entirely. *See Behringer*, 204 Ill.2d at 379. First, there are no facts alleged in the Third Amended Verified Counterclaim to establish any such emergency or to justify the imposition of such extraordinary relief. Second, the Village alleges that they have received complaints about the Prestige facility since 2019, yet, as set forth in paragraphs 3-6 above, the Village withdrew its prior two motions for TRO and then waited until July 19, 2024 to file its Third Amended Verified Counterclaim upon which this Third Motion for TRO is based. At oral argument, the Village argued that it received an increased number of complaints since December 2023, yet it waited until August 23, 2024 to file this Third Motion for TRO. The Village's delay in seeking relief shows that this is not an extreme emergency justifying the extraordinary relief of a TRO.
12. Additionally, to obtain a temporary restraining order, a plaintiff must typically establish: (1) a clearly protected right; (2) irreparable harm by the defendant's conduct if an injunction does not issue; (3) there is no adequate remedy at law or in equity; and (4) likelihood of success on the merits. *Chi. Sch. Reform Bd. of Trs. v. Martin*, 309 Ill.App.3d 924, 939 (1st Dist. 1999). The failure to establish any one of these elements is a sufficient basis to deny a request for a temporary restraining order. *Abbinanti v. Presence Cent. & Suburban Hospitals Network*, 2021 IL App (2d) 210763, ¶15.
13. "A party seeking an injunction must file a complaint pleading facts that justify a right to injunctive relief." *In re Marriage of Eckersall*, 2014 IL App (1st) 132223, ¶21. Allegations consisting of opinions, conclusions, or beliefs are not sufficient. *In re Marriage of Slomka & Lenehan-Slomka*, 397 Ill.App.3d 137, 144 (1st Dist. 2009). The extraordinary nature of the injunctive remedy limits granting injunctive relief to a complaint that clearly shows, on

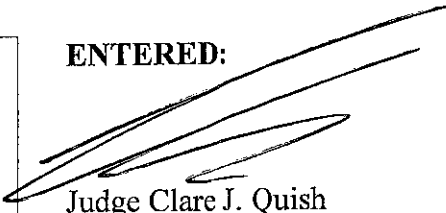
its face, the plaintiff's clear right to injunctive relief and states facts which establish the right to such relief in a positive, certain and precise manner. *Sadat v. American Motors Corp.*, 104 Ill.2d 105, 116 (1984). Broad, conclusory allegations are insufficient to establish a plaintiff's entitlement to temporary injunctive relief. *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶15.

14. Here, the Village has not satisfied the elements of irreparable injury and inadequate remedy at law or in equity. *Happy R. Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶36. An irreparable injury is one which cannot be adequately compensated in damages or be measured by any certain pecuniary standard. *Diamond Sav. & Loan Co. v. Royal Glen Condo. Ass'n*, 173 Ill.App.3d 431, 435 (2d Dist. 1988). These elements are closely related; the "irreparable injury" element "occurs only where the remedy at law is inadequate, meaning that monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards." *Hensley Constr., LLC v. Pulte Home Corp.*, 399 Ill.App.3d 184, 190-91 (2d Dist. 2010). If a party's injury can be adequately compensated through money damages, then it has an adequate remedy at law and does not need the extraordinary remedy of injunctive relief. *Lumberman's Mut. Cas. Co. v. Sykes*, 384 Ill.App.3d 207, 230-31 (1st Dist. 2008).
15. Here, the Village's Third Motion for TRO does not address the element of inadequate remedy at law at all, cite to any facts alleged in the Third Amended Verified Counterclaim to support this element or show how the Village has no adequate remedy at law.
16. As to the element of irreparable injury, the Village fails to plead specific facts to show how the Village will be irreparably harmed without the TRO. Although the Village argues that "Prestige is operating to materially interfere with persons' (both residents and businesses) ability to use and enjoy" their property, it does not cite any facts to explain how any such injury is irreparable or could not be compensated by monetary damages or measured by any certain pecuniary standard. Although the Village refers to the declarations of several individuals attached to its Third Amended Verified Counterclaim and Third Motion for TRO, those declarations detail the declarants' complaints about the odor, but none of them sets forth specific facts as to any irreparable injury to satisfy this element.
17. Additionally, a TRO is an emergency remedy issued to maintain the status quo pending a decision on the merits of the case. *Delgado v. Board of Election Commissioners*, 224 Ill.2d 481, 483 (2007). Status quo is defined as "the last, peaceable uncontested status which preceded the litigation." *Falcon, Ltd. v. Corr's Natural Beverages, Inc.*, 165 Ill. App. 3d 815, 819 (1st Dist. 1987). Here, the relief the Village seeks would not preserve the status quo, but would change it. The status quo is that Prestige is operating its facility. Granting the relief the Village seeks, shutting down Prestige's operations entirely, would not preserve the status quo.
18. Finally, a temporary restraining order is an ancillary and provisional remedy and cannot constitute the ultimate relief afforded with respect to the matter in dispute. *Kurtzworth v. Illinois Racing Board*, 92 Ill.App.3d 564, 574 (5th Dist. 1981). Here, the Village's Third Motion for TRO seeks exactly the same relief it seeks in its Third Amended Verified Counterclaim—to enjoin Prestige from operating.

19. For all of the foregoing reasons, The Village of Mount Prospect's Emergency Motion for Temporary Restraining Order and the Setting of a Preliminary Injunction Hearing is denied.
20. Additionally, the Court strikes Pending Intervenor City of Des Plaines' Statement in Support of Village of Mount Prospect's Emergency Motion for Temporary Restraining Order and the Setting of a Preliminary Injunction Hearing because City of Des Plaines has not been granted leave to intervene as of yet and has no standing.
21. This case remains set for status on **September 12, 2024 at 9:30 a.m.** by Zoom (Meeting ID: 953 7174 9534; Password: 253498; Dial-In: (312) 626-6799) to set the remaining discovery schedule and a preliminary injunction hearing.

Judge Clare J. Quish
(312) 603-3733
ccc.chancerycalendar14@cookcountyl.gov
Zoom Meeting ID: 953 7174 9534
Zoom Password: 253498
Zoom Dial-In: (312) 626-6799

ENTERED:


Judge Clare J. Quish

DATE: September 9, 2024

Judge Clare J. Quish

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