

JULY 2011 MICHIGAN BAR EXAMINATION MODEL ANSWERS

ANSWER TO QUESTION NO. 1

Injunctive relief is largely an equitable remedy, although governed by MCR 3.310. There are four main factors a court must consider: Whether (1) the moving party has made the required demonstration of irreparable harm, (2) the harm to the moving party absent the injunction outweighs the harm it would cause the adverse party, (3) the moving party showed that it is likely to prevail on the merits, and (4) there will be harm to the public interest if an injunction is issued. *Detroit Firefighters Association v Detroit*, 482 Mich 18, 34 (2008).

(1) Whether there has been a demonstration of irreparable harm.

This is the most significant factor. The harm must be particularized and must be real and imminent, not speculative. The harm must typically not be compensable by monetary damages.

No facts presented demonstrate irreparable harm to Betty's if the injunction does not issue. Betty's profits are low, the lowest of 200 stores. Even if those profits are lost, Betty's loss is determinable and compensable, in money. Moreover, this low profit level has occurred even though the location might be considered desirable. If Betty's loses that location, locations may nevertheless be open. That Betty's cannot operate out of that location is not irreparable harm.

(2) Whether the harm to the moving party absent the injunction outweighs the harm it would cause the adverse party.

While some harm could come to Betty's by loss of the location, the greater harm is to Sam who will be forced to operate a Betty's when Sam does not want to do so. Sam may get a better deal from Handy's, a deal they would lose if the injunction were issued.

(3) Whether the moving party showed that it is likely to prevail on the merits.

At the crux of this matter, Betty's would have to show it has a legally enforceable contract to operate its location at Sam's property. However, the prior contract has expired. The new contract was never signed. Absent some other non-contractual theory, which the facts do not support, Betty's has nothing to enforce. Therefore, it is likely Betty's would lose, not win.

(4) Whether there will be harm to the public interest if an injunction is issued.

This is not a case directly affecting the public's interest. The public has been aware of the Betty's location for some time. That location would be replaced by a Handy's. The switch in business does not have a significant (or maybe even any) impact on the public interest.

Conclusion: Consideration of the factors for injunctive relief warrants the conclusion the injunction should not be issued. Betty's does not prevail on the most salient factor, demonstration of irreparable harm; and does not prevail on the weighing of the harm and likelihood of success on the merits factors. Lastly, the public interest is not affected and is thus a non-issue.