

EXAMINERS' ANALYSIS OF QUESTION NO. 13

Under Michigan law, "[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." *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8 (2008) (citations and internal quotation marks omitted).

In determining whether to grant a preliminary injunction, the court must consider four factors:

whether (1) the moving party made the required demonstration of irreparable harm, (2) the harm to the applicant absent such an injunction outweighs the harm it would cause to 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 Fire Fighters Ass'n, IAFF Local 344 v City of Detroit*, 482 Mich 18, 34 (2008).]

Applying the preliminary injunction factors, the court should deny Pym's motion. The focus of the analysis should be on factors (1) and (2), as the Michigan Supreme Court has held that "a particularized showing of irreparable harm . . . is an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters*, 482 Mich at 9 (citation omitted). Without such a showing, a plaintiff's likelihood of success on the merits is irrelevant. See *id.* at 13 n 21. To establish irreparable injury, a plaintiff must demonstrate "a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty." *Thermatool Corp v Borzym*, 227 Mich App 366, 377 (1998).

Here, Pym's motion should be denied because it cannot show that it would suffer irreparable harm without injunctive relief. Although Pym claims that a failure by Declan to supply its mufflers would result in an eventual shutdown of Kaxton's assembly line and harm Pym's relationship with Kaxton, Pym has not established that such harm is certain to occur, or that it

is unavoidable. See *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 651-652 (2012) ("The [claimed irreparable] injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief.") (citation omitted).

First, Pym acknowledges that it could obtain mufflers from another source, with any resulting delay or increased cost being compensable through money damages. Second, Pym could pay Declan the increased price and sue Declan for breach of contract and seek money damages. Either way, monetary damages would adequately compensate Pym. See also *Pontiac Fire Fighters*, 482 Mich at 10 ("Granting extraordinary equitable relief to remedy these economic injuries is unnecessary and inappropriate because they can be remedied by damages at law.").

It is also not apparent that any claimed harm to Pym would be outweighed by the potential of harm to Declan if Pym is able to force Declan to continue supplying mufflers under the current price. Declan presented evidence that it would suffer financial harm, even potentially forcing it into bankruptcy.

Factor (3) (likelihood of success on the merits) also weighs against the issuance of a preliminary injunction. Declan relies on the parties' agreement providing that prices are subject to steel surcharges. Pym asserts that the parties subsequently modified their agreement, but Declan disputes that claim. In light of this disputed factual issue, there is no indication that Pym is likely to succeed on the merits of its breach of contract claim.

Finally, factor (4) (injunction is in the public interest) is arguably neutral, as there is no indication that the public at large would necessarily benefit by the issuance of an injunction. Although a shutdown of Kaxton's plant could idle workers and have other consequences adverse to the public interest, potentially forcing Declan into bankruptcy would not be in the public interest either.