

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

MIDLAND FARMS, INC.,

Plaintiff,

vs.

Index No.: _____

GEORGE HASEOTES,

Defendant.

BARCLAY DAMON, LLP

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

Plaintiff Midland Farms, Inc. (“Plaintiff” or the “Company”) respectfully submits this motion pursuant to Article 63 of the New York Civil Practice Law and Rules (“CPLR”) to enjoin Defendant George Haseotes (“Defendant”) from engaging in certain unlawful conduct, more specifically to prevent him from entering upon Plaintiff’s premises or otherwise engaging in conduct that interferes with Plaintiff’s business operations.

Plaintiff is a family owned dairy processing company with locations in New York and New Jersey. Plaintiff processes milk from local farmers into various milk products and trucks those products to various customers throughout the northeast US. Plaintiff’s President is Demetrios Haseotes. Defendant is Demetrios’ uncle. However, Defendant has no interest in the Company whatsoever: He hold no ownership interest in the Company, is not a director or officer of the Company, and he is not an employee, agent or representative of the Company.

Defendant recently began engaging in conduct detrimental to the Company. In particular, Defendant entered upon Plaintiff’s premises and attempted to countermand the Company President’s instructions to employees and then became abusive to them. This happened on more than one occasion. As a result, two employees quit. Defendant’s conduct has had a significant detrimental effect on Plaintiff’s business operations. Moreover, Defendant has threatened to continue his conduct, including entering onto Plaintiff’s premises without permission.

Accordingly, Plaintiff is seeking immediate injunctive relief to prevent the Defendant from entering onto its premises or otherwise engaging in conduct that interferes with the Company’s business operations.

STATEMENT OF FACTS

The relevant facts supporting Plaintiff's application are set forth in detail in the accompanying Affidavit of Demetrios Haseotes, sworn to November 25, 2015 ("Haseotes Aff.") and the Plaintiff's Complaint, which are incorporated by reference herein.

ARGUMENTS

I. STANDARD OF REVIEW

A preliminary injunction is properly issued when necessary to preserve the *status quo* or to protect important interests pending further proceedings on the underlying complaint. N.Y. C.P.L.R. § 6301. A preliminary injunction may be issued if the movant establishes a likelihood of success on the merits, irreparable injury in the absence of an injunction, and a balancing of equities in favor of granting the relief requested. *J.A. Preston Corp. v. Fabrication Enter., Inc.*, 68 N.Y.2d 397, 406 (1986); *see also Marcone APW, LLC v. Servall Co.*, 85 A.D.3d 1693, 1695 (4th Dep't 2011). Likewise, "a temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had." N.Y. C.P.L.R. § 6301; *see also* N.Y. C.P.L.R. § 6313. Injunctive relief should be recognized where necessary to ensure that any subsequent determination by the court is not rendered ineffectual. N.Y. C.P.L.R. § 6301.

As set forth below, Plaintiff is entitled to a Temporary Restraining Order and Preliminary Injunction under the above standard.

II. PLAINTIFF IS ENTITLED TO THE REQUESTED INJUNCTIVE RELIEF

A. Plaintiff Has Demonstrated A Likelihood Of Success On The Merits

In the context of a motion for injunctive relief, proof sufficient to establish the claims as a matter of law is not required. *See Time Square Books v. City of Rochester*, 223 A.D.2d 270, 278 (4th Dep't

1996). Instead, it is enough if the moving party makes a *prima facie* showing of its right to relief. The actual proving of its case should be left to the full hearing on the merits. *See id.* (citing *Tucker v. Toia*, 54 A.D.2d 322, 326 (4th Dep't 1976) (citations omitted)).

Plaintiff's claim here for a trespass to land requires that Plaintiff demonstrate that Defendant intentionally entered Plaintiff's premises and that he remained on the premises after his permission to be there was withdrawn. The Haseotes Aff. demonstrates that Plaintiff has and will demonstrate such factors. *See Haseotes Aff.*, ¶¶ 8 to 14.

B. Defendant's Actions Have and Will Cause Irreparably Harm to Plaintiff.

Irreparable harm exists where the movant demonstrates that the injury to be suffered is more immediate and apparent than any perceived harm caused to the defendant through the imposition of an injunction. *See Chernoff Diamond & Co. v. Fitzmaurice, Inc.*, 234 A.D.2d 200, 200 (1st Dep't 1996). This requirement is met where the occurrence of the threatened harm will render a final judgment ineffectual. *See Burmax v. B&S Indus., Inc.*, 135 A.D.2d 599, 601, 522 N.Y.S.2d 177, 179 (2d Dep't 1987).

In the context of a motion for a temporary restraining order and preliminary injunction, irreparable harm exists if money damages are insufficient to make the movant whole. *See Willis of N.Y., Inc. v. DeFelice*, 299 A.D.2d 240, 242 (1st Dep't 2002). The loss of good will associated with a plaintiff's business, and the possibility of loss of customers constitute irreparable harm sufficient to warrant a preliminary injunction. *Willis of N.Y., Inc.*, 299 A.D.2d at 242, 750 N.Y.S.2d at 42; *Ecolab, Inc. v. Paola*, 753 F. Supp. 1100, 1110 (E.D.N.Y. 1991).

In this case, Plaintiff has suffered, and will continued to suffer, irreparable harm if Defendant is not enjoined from entering upon Plaintiff's premises and otherwise interfering with Plaintiff's business operations. Defendant's unlawful conduct and trespassing has already cost Plaintiff the loss of two

employees and has caused other significant disruption to Plaintiff's business operations that jeopardizes Plaintiff's work force and its ultimate ability to service its customers.

C. The Balance Of Equities Favors Plaintiff

For purposes of determining the balancing of the equities, it is generally found that where the injury to be suffered by the movant is more substantial than any harm upon the non-movant in granting the injunction, the balance shifts decisively in favor of the movant. *See Vanderminden v. Vanderminden*, 226 A.D.2d 1037, 1042 (3d Dep't 1996).

Defendant would suffer no damage as a result of the granting of the requested injunctive relief. Defendant has no lawful right to be on Plaintiff's premises or interfere with Plaintiff's business. On the other hand, in the absence of injunctive relief, Defendant could continue to engage in his unlawful and disruptive conduct. The requested injunction seeks only to protect Plaintiff's legitimate business interests and, therefore, is not inequitable. Thus, the balancing of equities weigh in Plaintiff's favor. *See Marcone APW, LLC*, 85 A.D.3d at 1697; *Gundermann & Gundermann Ins. v. Brassill*, 46 A.D.3d 615, 617 (2d Dep't 2007).

III. THE RECORD OF THIS MATTER SHOULD BE SEALED.

The Uniform Rules for the New York State Trial Courts provide that "[e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause" 22 N.Y.C.R.R. 216.1(a). This rule further provides that "[i]n determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties." *Id.* "To demonstrate 'good cause,' [a plaintiff] must establish that 'compelling circumstances' exist to justify secrecy." *Doe v. New York Univ.*, 2004 NY Slip Op 24529, 6 (N.Y. Sup. Ct. 2004); *see also Town of Macedon v. Hsarman*, 2007 NY Slip Op 27348 (Wayne Sup. Ct. 2007).

As detailed in the Haseotes Aff. and the Complaint, Defendant's conduct has detrimentally impacted several employees of the Company. In the course of this matter, it is anticipated that personal and professional details relating to those employees will be revealed. It would, therefore, be appropriate to seal the record of this matter to protect the privacy of those employees. Moreover, the internal strife and disruption created by Defendant's conduct, if made public, could lead to even further disruption and damage to the Company's business.

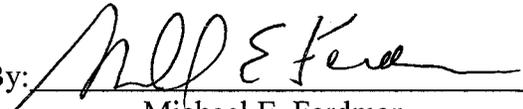
In the end, this is a matter in which the public would not have a significant interest. It would be in the interest of all involved, both the parties and the innocent Company employees who have been affected by Defendant's conduct, to have this matter resolved in private. For these reasons, Plaintiff respectfully submits that there is good cause to seal the record of this matter.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction should be granted in its entirety, together with such other and further relief as this Court deems just and proper.

DATED: December 7, 2015

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