

**CHARLES N. INTERNICOLA, ESQ.**

*CASE LITIGATION REPORT*



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**\* RE: SUCCESSFUL OPPOSITION TO A MOTION FOR A PRELIMINARY  
INJUNCTION FOR AND TEMPORARY RESTRAINTS IN THE STATE  
OF NEW JERSEY.**

In business disputes where alleged tangible assets and intellectual property are at stake it is common for a plaintiff to seek the imposition of a temporary restraining order and temporary restraints. This “equitable remedy” is quite valuable in litigation. In a recent decision Mr. Internicola, Esq. was successful in defending the interests of his business client wherein the plaintiff’s application for temporary restraints was denied. Significant portions of Mr. Internicola’s letter brief follows. In the brief Mr. Internicola successfully demonstrates that the moving plaintiff failed to meet to predicate legal requirements to obtain a temporary restraining order.

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VIA FACSIMILE

Hon. Deanne Wilson, J.S.C.  
Morris County Superior Court  
PO Box 910  
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Morristown, 07963-0910

**RE:   *Berger, et. al. v. AH, et. al.***  
**Docket No.:   MOR-C-00022-10**

Your Honor:

This letter brief is respectfully submitted on behalf of Defendants AH, and AH (hereinafter collectively referred to as the “AH Defendants”) in opposition to the Plaintiffs’ application for Temporary Restraints in the above referenced action. In their instant application without the support of factual certifications the Plaintiffs seek injunctive relief and temporary restraints relating, exclusively, to alleged “monetary damages”. The Plaintiffs fail to offer or make any showing as to the existence of any “irreparable harm” and, in fact, concede that their application relates to a pre-emptive attempt to collect monetary damages that the Plaintiffs believe they may eventually be entitled to. As demonstrated below, it is respectfully submitted that, as a matter of law, the Plaintiffs are not entitled the restraints and injunctive relief sought in their moving papers.

Upon the filing of the Amended Verified Complaint the Plaintiffs seek the extraordinary relief of a temporary restraining order and preliminary injunction and, in doing so, seek to encumber and restrain the AH Defendants from engaging in any economic activity. Moreover, the Plaintiffs seek relief that will intentionally interfere with the AH Defendants rights and legal relationships with numerous third parties. That is, the restraints sought by the Plaintiffs would interfere with contractual relationships and rights between the AH Defendants and numerous third-parties (including financial lending institutions) that conduct business and maintain outstanding loan agreements and obligations with these third parties. In doing so, the Plaintiffs seek the equitable intervention of this Court and the imposition of temporary restraints based on the erroneous

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proposition that the Plaintiffs will eventually be entitled to a monetary judgment against the AH Defendants. It is respectfully submitted that the Plaintiffs have, as a matter of law, failed to demonstrate the predicate showing of “irreparable harm” necessary for the award of the requested relief.

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In determining whether to enter an interlocutory injunction, a judge must find that the movant has demonstrated a reasonable probability of success on the merits; that a balancing of the equities and hardships favors injunctive relief; that the movant has no adequate remedy at law and that the irreparable injury to be suffered in the absence of injunctive relief is substantial and imminent; and that the public interest will not be harmed.

*Waste Management of New Jersey, Inc. v. The Union County Utilities Authority and IWS Transfer Systems of NJ, Inc., et. al.*, 399 N.J. Super. 508 (App. Div. 2008) (quoting *Crowe v. De Gioia*, 90 N.J. 126 (1982)).

In seeking the equitable intervention of this Court and the award of injunctive relief the Plaintiffs must demonstrate that a preliminary injunction is necessary to prevent “irreparable harm” and make a preliminary showing of a reasonable probability of ultimate success on the merits. *Crowe v. De Gioia*, 90 N.J. 126 (1982). Where the requested relief relates to monetary damages or damages that may be quantified by a monetary sum, “irreparable harm” cannot exist and the extraordinary remedy of an injunction cannot be granted. *See, Crowe v. De Gioia*, 90 N.J. 126 (1982) (harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages); *see also, Subcarrier Communications, Inc. v. Day*, 299 N.J. Super. 634 (App. Div. 1997) (injunctions are usually only granted when without them there would be irreparable harm and money damages would not adequately redress the harm).

Although the movant acknowledges the mandatory burden of establishing “irreparable harm” (*see, Plaintiffs’ Memorandum of Law, P.3, quoting Crowe v. De Gioia*, 90 N.J. 126, at 132-33), the Plaintiffs nevertheless ignore the law of this State. *See, The Princeton Insurance Company v. 349 Associates, LLC*, 147 N.J. 337 (1997) (preliminary injunction denied where plaintiff (1) had not established a likelihood of success on the merits and (2) even if the plaintiff had ultimately prevailed, monetary damages would have been adequate). In doing so the Plaintiffs fail to cite to any controlling case law or decisions by the courts of this State. Rather the Plaintiffs cite to the 7<sup>th</sup> Circuit decision of *Roland Machinery Company v. Dresser Industries, Inc.*, 749 F.2d 380 (7<sup>th</sup> Cir. 1984), and to the District Court decision of *Zenith Laboratories, Inc. v. Eli Lilly and Company*, 460 F. Supp. 812 (D.N.J. 1978) in a desperate attempt to overturn the binding case law of this State. In doing so, the Plaintiffs wrongfully assert that these “patent infringement” and “exclusive contract” cases support the proposition – or at least the possibility – that, somehow, injunctive relief is warranted even where irreparable harm is not present. It is respectfully submitted that the Plaintiffs’ reliance on both *Roland Machinery Co.* and *Zenith*

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*Laboratories, Inc.* is misplaced in that, unlike the instant action, the alleged claims and rights of the *Roland Machinery Co.* and *Zenith Laboratories, Inc.* plaintiffs related to the violation and breach of the plaintiffs' intellectual property, *viz.*, the diversion of the plaintiffs' markets through the violation of a patent (*Zenith Laboratories, Inc.*) and an exclusive contract (*Roland Machinery Co.*). Of significance in each cited action the Courts reaffirmed the predicate showing of "irreparable harm" and in the *Roland Machinery Co.* decision denied the requested injunctive relief. In *Zenith Laboratories, Inc.* injunctive relief was granted only after a showing as to the violation of the plaintiff's intellectual property rights and the diversion of the plaintiff's markets.

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Neither action involved the attempted injunctive preservation of assets for the purpose of facilitating the potential recovery of a monetary judgment that may or may not occur.

It is respectfully submitted that the cases cited by the Plaintiffs (a) are not controlling, (b) violate the express case law established by the New Jersey Supreme Court [*Crowe v. De Gioia*, 90 N.J. 126 (1982)], (c) are inapposite to the facts of this case and (d) support the denial of the instant application. It is respectfully submitted that Plaintiffs' application seeking a temporary restraining order, preliminary injunction and order of attachment be denied in its entirety.

Respectfully Submitted,

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