

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

WAREHOUSE TECHNOLOGY, INC.,	:	January Term 2006
Plaintiff,	:	
v.	:	No. 2827
LIFT INCORPORATED, SPX DOCK	:	
PRODUCTS-TKO, JUST RITE	:	COMMERCE PROGRAM
EQUIPMENT,	:	
Defendants.	:	Control Number 011631

MEMORANDUM OPINION

BERNSTEIN, J.

Presently before the court is Petitioner Warehouse Technology, Inc.’s Petition for Temporary Restraining Order and Preliminary Injunction. For the reasons discussed below, the Petition for Temporary Restraining Order is denied.

BACKGROUND

On November 30, 2005, Petitioner Warehouse Technology, Inc. (“Petitioner”) entered into a written contract with Defendants Lift, Inc. for the delivery of forty two (42) WelterWeight Knockout Doors (“Doors”) with related accessories six weeks from the contract date.¹ The doors are manufactured by SPX Dock Products- TKO (“SPK”). Lift Inc. is an authorized dealer of the doors. Thereafter, Petitioner entered into a separate contract on or about December 13, 2005 with Matrix, Inc. to deliver and install the 42 doors.

On January 7, 2006, Lift, Inc. and SPX unilaterally decided that they would not fulfill their obligations under the contract. Lift, Inc. sent an e mail to Petitioner which refused to honor its contract to sell the doors claiming its refusal was based upon a request from SPX. Petitioner made attempts to obtain the doors from another distributor

¹ The factual recitals are taken from the allegations of the complaint.

of SPX's doors. Other than one quote from a different distributor at double the cost, no other distributor would allow Petitioner to install the doors.

This Petition and Complaint was filed seeking injunctive relief against Lift, Inc. and SPX only, breach of contract² against Lift, Inc. and SPX, and tortious interference with contract against Just Rite Equipment.³ The court entertained argument on the Petition on January 24, 2006.

DISCUSSION

A mandatory preliminary injunction is an injunction which orders the defendant to perform some positive act. Such an injunction goes beyond mere restraint and commands acts to be done or undone. Josten Aluminum Products Co. Inc. v. Mount Carmel District Industrial Fund, 256 Pa. Super. 353, 389 A.2d 1160 (1978). Mandatory preliminary injunctions should only be issued in exceptional circumstances, where the rights of the parties are entirely clear and where there is no adequate damage remedies.. Board of Directors of the School District of the City of Scranton v. Roberts, 13 Pa. Commw. 464, 320 A.2d 141 (1974); see also, Kessler v. Broder, 851 A.2d 944 (Pa. Super. 2004).

The six essential prerequisites a plaintiff must establish to qualify for injunctive relief are: (1) absent an injunction, the plaintiff will suffer an immediate and irreparable harm which cannot be adequately compensated by monetary damages; (2) that such harm to plaintiff is greater than any harm that any interested party will suffer if the injunction is granted; (3) that the injunction will return the parties to the status quo that existed before any the occurrence of any wrongful conduct; (4) that the plaintiff is likely to succeed on

² Since this dispute involves the sale of goods from one party to another, Article 2 of the Pennsylvania Uniform Commercial Code ("UCC") 13 Pa. C.S.A. §§ 2100 *et seq.* applies.

³ Just Rite Equipment is also a distributor for SPX.

the merits of the underlying claim; (5) that the injunction sought is reasonably suited to abate the offending activity; and (6) that the injunction will not adversely affect the public interest. Deynzer v. Columbia Gas of Pa., Inc., 875 A.2d 298 (Pa. Super. 2005).

While Petitioner will likely succeed on the merits of its claims all future injury is fully compensable by money damages. Accordingly Petitioner's claim for immediate injunctive relief is denied.

At 13 Pa. C. S. C. § 2716 (c) "Right of Buyer to Specific Performance or Replevin", the Legislature grants a buyer the right to replevin or specific performance for breach of a contract for the sale of goods. However, "Specific performance may be decreed where the goods are unique or in other proper circumstances." 13 Pa. C. S. § 2716 (a). Therefore, the law requires the buyer to show the goods under the breached contract were unique. During argument, defense counsel represented to the court that the doors could be fabricated elsewhere. Hence, Petitioner is not entitled to specific performance.

Furthermore, Petitioner is not entitled to replevin of the doors. The Legislature at 13 Pa. C. S. § 2716 (c) states:

"The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing, or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered..."

The Legislature defines "goods identified to the contract" in 13 Pa. C. S. A. § 2501 "Insurable Interest in Goods; Manner of Identification of Goods" as follows:

- (a) GENERAL RULE.- The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any

time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs as follows:

(1)When the contract is made if it is for the sale of goods already existing and identified.

(2) If the contract is for the sale of future goods ...when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers.”

Since all parties represented during argument that the doors have not yet been fabricated, the Petitioner is not entitled to replevin.

Further Petitioner’s damages can be fully compensated by money damages upon its breach of contract claim. Petitioner may recover from SPX and Lift, Inc. the difference between the contract price and the cost of purchasing substitute doors, 13 Pa. C.S. § 2712,⁴ the difference between the market price at the time when the buyer learned of the breach and the contract price, 13 Pa. C.S. § 2713⁵ and incidental and consequential damages, 13 Pa. C.S. § 2715. The Pennsylvania Uniform Commercial Code (UCC) defines incidental damages to include all commercially reasonable charges and any other reasonable expense incident to the breach. See, 13 Pa. C.S. § 2715 (a)(1-3). The UCC defines consequential damages to include any loss resulting from general or particular requirements and the needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover such as loss profits and good will. See 13 Pa. C.S. § 2715 (a)(1-3). Petitioner may also be entitled to pre and post judgment interest on the breach of contract claim.

⁴ This is also referred to as cover. The Uniform Commercial Code defines cover as the right of a buyer, after breach by a seller, to purchase goods in substitution for those due from the seller if such purchase is made in good faith and without reasonable delay. U.C.C. § 2-712 (1), (2).

⁵Evidence of the difference between the market price and the contract price has already been offered as a measure of damages. Defendant Just Rite has offered to sell the doors to Petitioner and allow it to install the doors subject to inspection at an extra cost of \$38,710. In the event Petitioner is unable to avail itself of Just Rite’s offer and Petitioner has no ability to otherwise cover, consequential damages such as loss profits and good will follow.

Petitioner may recover compensatory damages including loss profits for interruption of an established business, loss of good will and reputation due to customer dissatisfaction and punitive damages as part of its tortious interference of contract claim.

CONCLUSION

For the foregoing reasons, the Petition for Temporary Restraining Order is denied. A Preliminary Injunction hearing is hereby scheduled for January 30, 2006 at 10:00 a.m. in Courtroom 246 City Hall, Philadelphia, Pa. Counsel shall provide opposing counsel and the court with a list all witness to be offered as well as a one page synopsis of testimony not later than 9:00 a.m. on January 30, 2006. Counsel may fax the witness list and the one page synopsis of testimony to chambers at 215-686-9538. All parties are ordered to attend.

BY THE COURT,

MARK I. BERNSTEIN, J.

Date: January 27, 2006