

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

FRANKLIN CAPITAL PARTNERS,	:	May Term 2006
INC. and MANAYUNK INVESTORS	:	
LIMITED PARTNERSHIP,	:	
Plaintiffs,	:	No. 3660
v.	:	
MOSECORP II, INC., ALBERT M.	:	Commerce Program
GREENFIELD, III, and FLATROCK	:	
PARTNERS, L.P.,	:	Control Number 052995
Defendants.	:	

OPINION

Presently before the court is plaintiffs Franklin Capital Partners, Inc. and Manayunk Investors Limited Partnership’s (“Plaintiffs”) Petition for Preliminary Injunction. Plaintiffs are limited partners of FlatRock Partners, L.P. (“the Partnership”). (Joint Stipulation of Facts ¶¶ 1, 2). MooseCorp II, Inc. is the general partner of FlatRock Partners L.P. (Id. ¶ 5). Albert M. Greenfield is the president of MooseCorp., II, Inc. (Id. ¶ 6).

On April 3, 2001, the Partnership acquired certain real property located at 2 Leverington Avenue, Philadelphia for the purpose of developing three rental commercial spaces and fifty-nine (59) rental residential apartments to be known as “The Watermill at Manayunk”. (Id. ¶ 7). On April 3, 2001, plaintiffs were admitted into the Partnership as the Special Limited Partner and Limited Partner. (Id. ¶ 11). Shortly thereafter, FlatRock Partners began development of the Project which was converted from three commercial rental spaces and fifty nine residential rental apartments to three commercial condominium units and fifty nine residential condominium units. (Id. ¶ 13-18). By

Settlement Agreement dated May 1, 2006 the Partnership settled a longstanding litigation with the general contractor of the Project for 3.9 million dollars. (Id. ¶ 19-21).

On May 30, 2006, plaintiffs commenced this civil action against defendants FlatRock Partners L.P., Moosecorp II, Inc. and Greenfield. The complaint alleges breach of contract, breach of fiduciary duty, breach of rent guarantee agreement and seeks declaratory judgment, an accounting and injunctive relief. The Honorable Albert W. Sheppard, Jr. denied plaintiffs' motion for a temporary restraining order freezing the use by FlatRock Partners of the \$3.9 million Settlement Amount and a hearing on plaintiffs' Petition for a Preliminary Injunction was scheduled for June 20, 2006. (Id. ¶ 23-24).

Plaintiffs subsequently filed an amendment to their Petition modifying their request for injunctive relief. Plaintiffs now seek a prohibitory injunction enjoining the Partnership from making any distribution of funds to Mr. Greenfield or any Affiliate and a mandatory injunction requiring Mr. Greenfield to repay, or cause to be repaid, \$1,625,372.66 to the Partnership.

On June 20, 2006, the court directed the parties to file a Joint Stipulation of Facts. On July 18, 2006, the parties submitted a Joint Stipulation of Facts as well as disputed issues of fact. After reviewing the parties' submission and complaint and after the conference with counsel, it is clear to the court that, even if everything plaintiffs claim is true, they are not entitled to the extraordinary relief that they have requested and their Motion must be denied.¹

¹ The decision whether or not to grant a hearing on an emergency injunction is left to the sound discretion of the court; the mere filing of a motion by the plaintiff does not automatically entitle him to a hearing. See Kim v. Choi, July Term 2005 No. 3410 (August 9, 2005)(citing Pa. R. Civ. P. 1531 (a)).

There are six essential prerequisites that a party must establish prior to obtaining preliminary injunctive relief:

- 1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages.
- 2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings;
- 3) that a preliminary injunction will probably restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- 4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, that it is likely to prevail on the merits;
- 5) that the injunction it seeks is reasonably suited to abate the offending activity; and
- 6) that a preliminary injunction will not adversely affect the public interest.

Warehime v. Warehime, 580 Pa. 201, 860 A.2d 41, 46-47 (2004). These requisite elements are cumulative, and if one element is lacking, relief may not be granted.

Norristown Mun. Waste Authority v. West Norriton Twp. Mun. Authority, 705 A.2d 509, 512 (Pa. Commw. 1998).

Plaintiffs' request for injunctive relief fails since they have failed to establish the **actual** existence of irreparable harm. An injury is regarded as "irreparable" if it will cause damage which can be estimated "only by conjecture and not by an accurate pecuniary standard." Sovereign Bank v. Harper, 449 Pa. Super. 578, 674 A.2d 1085, 1093 (1996). Harm must be irreversible before it will be deemed "irreparable." Id. Thus, plaintiffs must demonstrate the likelihood of a loss that is not entirely ascertainable or compensable by money damages. John G. Bryant Co. v. Sling Testing & Repair, Inc., 471 Pa. 1, 369 A.2d 1164 (1977). However, even when monetary damages are fully calculable, a preliminary injunction may be granted when there is proof that the

threatened monetary loss is so great that it threatens the existence of a business or when a defendant improperly takes money which unquestionably belongs to plaintiff.²

Here, plaintiffs have made no such showing. Instead plaintiffs' allegations concern the interpretation of a Partnership Agreement as to how certain settlement funds and sale proceeds should be treated and distributed among the partners. Allegations of improper distribution of partnership funds without more are insufficient to prove irreparable harm.

CONCLUSION

For all the foregoing reasons, plaintiffs' Motion for Preliminary Injunction is denied.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

² See American Express Travel Related Services Company, Inc. v. Laughlin, 424 Pa. Super. 622, 623 A.2d 854, 856-857 (1993)(affirming entry of preliminary injunction entered to enjoin the concealing or dissipation of funds where defendant, a fiduciary, admitted to not remitting funds to plaintiff); East Hills TV & Sporting v. Dibert, 366 Pa. Super. 455, 531 A.2d 507, 509 (1987)(enjoining seller from using funds in seller's bank so as to prevent potential loss of funds belonging to buyer and necessary to carry on its business); Citizens Bank v. Myers, 872 A.2d 827 (Pa. Super. 2005)(freezing defendants' accounts that contained monies defendants embezzled from plaintiff).