

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY JOHNSON and
DARLEEN STANTON, et al.,

Plaintiffs,

vs.

CLAIR R. COUTURIER JR., et
al.,

Defendants.

Case No. 2:05-cv-2046-RRB
(Consolidated with
2:07-cv-1208-RRB)

ORDER GRANTING
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court are Plaintiffs Gregory Johnson, William Rodwell, Edward Rangel, and Kelly Morrell ("Plaintiffs") with a Motion for a Preliminary Injunction at Docket 407. The Court has already granted Plaintiffs' Motion for a ten-day temporary restraining order pending the issuance of a decision on the request for a preliminary injunction.¹ Plaintiffs seek an injunction to place

a constructive trust upon all property (wherever it is now located and in whatever form it now exists) which Defendant Clair R. Couturier, Jr. received from TEOHC and/or the

¹ Docket 408.

TEOHC Employee Stock Ownership Plan (the "ESOP") as a result of the Agreement and Plan of Merger dated January 21, 2004, the First Amendment to Agreement and Plan of Merger dated July 20, 2004, and all subsequent agreements with TEOHC, N&NW Manufacturing Holding Company, Inc. ("N&NW"), and Noll Manufacturing Corporation ("Noll"), in connection therewith, including but not limited to, any and all assets deposited in the Pensco Trust IRA Account for Clair R. Couturier, Jr., the real property and capital improvements located at 113 Wanish Place, Palm Desert, California, and all artwork, furniture, and furnishings contained therein, the 2006 Bentley vehicle (VIN SCBCR63W16C030768), and the golf club membership at the Big Horn Golf Club issued to Clair R. Couturier, Jr.²

Plaintiffs seek to enjoin Mr. Couturier from "transferring, secreting, assigning, pledging, mortgaging, or hypothecating" these interests without prior court approval.³ Plaintiffs also seek an accounting of these assets within 20 days.⁴

Defendant Couturier opposes at Docket 438.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 65 authorizes injunctive relief under certain specified conditions. As this court has previously noted, "[p]reliminary injunctive relief is appropriate when a plaintiff establishes (1) probable success on the merits and irreparable harm if relief is denied, or (2) that there are serious

² Docket 407 at 2.

³ Docket 407 at 3.

⁴ Docket 407 at 3.

questions on the merits and the balance of hardship tips sharply in favor of plaintiff."⁵ The test represents "a single continuum of concern which evaluates two factors that must always be considered: 'The likelihood of the plaintiff's success on the merits; and the relative balance of potential hardships to the plaintiff, defendant, and public."⁶ Analysis is affected by the relative probability of success and potential hardship: "[t]he higher a plaintiff's probability of success, the less the balance of hardship need tip in plaintiff's favor to support issuance of an injunction."⁷

III. DISCUSSION

The Court has already held in its Order Granting Plaintiffs' Motion for a Preliminary Injunction at Docket 398 that the Plaintiffs have shown they have at least a "fair chance of success on the merits" of their ERISA claims. Mr. Couturier has submitted a great volume of exhibits and sworn statements to the Court in order to disprove the Plaintiffs' case. He also objects that a substantial amount of the evidence submitted by the

⁵ Rowe v. Burton, 884 F. Supp. 1372, 1375 (D. Alaska 1994) (citing Rent-A-Center, Inc. v. Canyon Television and Appliance Rental, Inc., 944 F.2d 597, 602 (9th Cir. 1991)).

⁶ Id. (quoting State of Alaska v. Native Village of Venetie, 856 F.2d 1384, 1389 (9th Cir. 1988)).

⁷ Id.

Plaintiffs to support their request for an injunction is either inadmissible or not evidence at all.

However, in its ruling on the prior injunction, the Court held that "[t]he apparent level of Mr. Couturier's compensation [...] when compared with the overall value of Noll Manufacturing Company, would, if proven, be strong evidence by itself of either willful misconduct or at least lack of prudence" by the defendants." The Court sees no reason to upset this holding.

Mr. Couturier himself notes that, for three years work as Noll's CEO, he received "33% to 40% of the value" of the company's stock.⁸ Mr. Couturier denies any self-dealing, and argues that the compensation was fair to him and the ESOP to which he owed a fiduciary duty, citing the opinions of industry professionals. It may very well be that the deals were legitimate.

However, by his own admission Mr. Couturier received compensation that diluted by 33% to 40% the interest of employee shareholders to whom he owed a fiduciary duty, an interest for which he was later paid at least \$34,800,000.⁹ He did so while drawing a salary of at least \$22,812.50 to \$30,000 per month, in addition to other benefits.¹⁰ There were relatively few individuals

⁸ Docket 438 at 17.

⁹ Docket 438 at 18.

¹⁰ Docket 438 at 17.

who signed off on these transactions, and most of them are co-defendants with Mr. Couturier. Plaintiffs have at least a "fair chance" of showing that these transactions constituted self-dealing by Mr. Couturier.

The Court is aware that there are witnesses on both sides who will characterize these transactions as either legitimate or fraudulent. This factual dispute is precisely the sort of issue that the Ninth Circuit characterized as "'serious question[...]' [...] which cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the status quo."¹¹

The Court does not accept Mr. Couturier's objection that the assets are not recoverable by the Plaintiffs under ERISA. If it is shown that Mr. Couturier engaged in self-dealing to enrich himself at the expense of the plan, then he will "be personally liable to make good to the plan any losses resulting from each breach, and to restore to the plan any profits that the ESOP trustee made through use of the assets of the plan [...]."¹²

¹¹ Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988).

¹² Delta Star, Inc. v. Patton, 76 F. Supp. 2d 617, 638 (W.D. Pa. 1999), citing 29 U.S.C. § 1109.

Having met the burden of showing a fair chance of success on the merits, the Plaintiffs must show that the balance of hardships tips in their favor. The Court holds that the balance of hardships tips in favor of the Plaintiffs so long as the injunction issued today is sufficiently narrowly tailored to prevent prejudice to Mr. Couturier.

In so ruling, the Court seeks only to ensure that the status quo is preserved while the proper disposition of these assets is resolved through the litigation or settlement process. This can only be accomplished if the assets are properly identified and accounted for by Mr. Couturier. Although Plaintiffs have not shown that Mr. Couturier has improperly hidden or disposed of the assets, there is no practical way they could do so unless an accounting is made.

There is obviously some dispute as to the extent of the accounting which Plaintiffs seek. However, it is clear that Plaintiffs do not seek every receipt for every purchase made by Mr. Couturier for the last several years, but rather "brokerage statements of some kind."¹³ As noted by Plaintiffs, Defendant is free to request more time to account for the assets if necessary.

¹³ Docket 439 at 11.

Therefore, Mr. Couturier is not prejudiced by the accounting requirement.

The Court is sensitive to the prejudice that an overly sweeping injunction would impose on Mr. Couturier. The Court certainly has no intention of depriving Mr. Couturier of his health insurance, food and so on. It therefore limits the injunction such that Mr. Couturier is permitted "to cover normal living expenses and legal fees."¹⁴ This limitation should mitigate the prejudice to Mr. Couturier substantially.

Finally, the Court notes that Mr. Couturier is permitted at any time to petition the Court for consent to transfer or dispose of the assets for good cause.

IV. CONCLUSION

Plaintiff's Motion for a Preliminary Injunction at Docket 407 is GRANTED with the limitation that Mr. Couturier may use the assets to cover his normal living expenses and legal fees.

IT IS SO ORDERED.

ENTERED this 24th day of October, 2008.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

¹⁴ Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988).