IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

PRESTIGE FEED PRODUCTS, LLC, an Illinois limited liability company,	)	
Plaintiff,	)	
v.	)	Case No. 2023-CH-05147
	)	Calendar 14
VILLAGE OF MOUNT PROSPECT, an Illinois municipal corporation,	)	
Defendants.	)	

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO DISMISS
DEFENDANT'S COUNTERCLAIM FOR TEMPORARY INJUNCTIVE RELIEF

The Plaintiff, Prestige Feed Products, LLC, an Illinois limited liability corporation (Prestige), by its attorneys, Robbins DiMonte, Ltd., for its Reply in support of its Motion to Dismiss the Defendant, the Village of Mount Prospect, an Illinois municipal corporation (the Village)'s, Verified Counterclaim for Injunctive Relief (Motion), and in opposition to the Village's response (Response) thereto, states as follows:

INTRODUCTION

Prestige's Motion is based on a simple argument that merely requires the Court to enforce the June 7, 2023 Agreed Order (Agreed Order). In short, Prestige asserts that the Agreed Order is conclusive upon the Village and acts as a complete bar to the Village's Counterclaim because the Counterclaim seeks preliminary injunctive relief. In its Response, the Village attempts to create uncertainty by advancing its erroneous interpretations of the Agreed Order's language. However, the construction, interpretation, and legal effect of the Agreed Order is a matter to be determined by the Court as a question of law – not fact. The plain language of the Agreed Order states that Prestige, "may continue to operate its feed production equipment … beginning at 9 PM and ending at 5 AM on days of operation …" (Agreed Order, at ¶ 2), and that the parties agreed to "maintain the status quo during the pendency of the litigation." (Agreed Order at Preamble). Accordingly, the Village is not entitled to any preliminary injunctive relief that would prevent Prestige from operating its business during the limited hours agreed upon by the parties until conclusion of this litigation by settlement or a trial on the merits. For the reasons set forth more fully in the Motion, the Village's Counterclaim seeking temporary injunctive relief should be dismissed.

ARUGMENT

I. ***Prestige's Motion Makes Clear that the Counterclaim Must Be Dismissed Pursuant to the June 7, 2023 Order Because the Counterclaim Requests Temporary Injunctive Relief***. The Village first asks this Court to deny Prestige's Motion, because, according to the Village, "it is unclear if Plaintiff seeks to dismiss the Counterclaim or the Motion for Preliminary Injunction[1]." In support of its claim, the Village argues that "the Counterclaim did not make a claim for temporary injunctive relief." However, the Counterclaim states otherwise. The Village's Counterclaim expressly states that it is seeking a *preliminary injunction* against Prestige. (See Counterclaim at p. 3, heading above § A) (expressly stating that "The Facts Supporting ***The Village Defendants' Counterclaim For Preliminary Injunction***."). (Emphasis added).

Further, the Village argues that a "review of the Counterclaim shows the relief sought is not a preliminary injunction." However, a review of the Village's Counterclaim *and* the Motion for Preliminary Injunction show that the Village seeks nearly identical relief in both pleadings. Specifically, both the Counterclaim and the Motion for Preliminary Injunction seek the following relief: (i) "Enjoining Prestige from operating the Facility … *until such time as* the odors emitted ... have been eliminated …"; and (ii) "Direct that Prestige shall pay the costs for the independent expert evaluation of the Facility operations"; or (iii) "An order enjoining Prestige from operating the Facility … *until such time as* Prestige receives a conditional use permit …" (Compare the

[1] Prestige filed a motion to stay litigation on the motion for preliminary injunction pending the outcome of this motion, as the Court's ruling on this issue will have a determinative outcome on the motion for preliminary injunction.

Counterclaim at Prayer for Relief, and Motion for Preliminary Injunction at Prayer for Relief). There is no legitimate basis to argue that the Counterclaim does not seek temporary relief when the Motion for Preliminary Injunction asks this Court for identical, preliminary, relief. The Court's June 7, 2023 Agreed Order is an affirmative matter that negates the Village's Counterclaim because it seeks temporary relief in the form of a preliminary injunction.

II. ***The Counterclaim Violates the Terms of the Court's June 7, 2023 Order Because It Seeks to Alter the Status Quo Before This Matter is Adjudicated at Trial***. The Village further attempts to "muddy the waters" by arguing that its Counterclaim does not violate the terms of the Agreed Order, because: (a) the Village had leave to file a Counterclaim; (b) the Counterclaim seeks injunctive relief that is within the "four corners" of the Agreed Order because it does not seek to issue a cease and desist order or revoke Prestige's business license, and (c) the language "or the Court orders otherwise" permits the Village to have the terms of the Agreed Order modified or set aside by Court order. However, as will be set forth below, the Village's arguments ignore the plain language of the Agreed Order that requires the parties to "maintain the status quo during the pendency of the litigation." (See Agreed Order at Preamble).

A. *The Court's August 2, 2023 Order Granted the Village Leave to File a Counterclaim – Not to File a Counterclaim Seeking Temporary Relief*. The Village argues that Prestige's Motion should be denied because the Court granted the Village leave to file a counterclaim. In support, the Village correctly states that the Agreed Order permitted the Village to answer Prestige's Complaint (or otherwise plead), and thereafter, on August 2, 2023, the Court granted the Village leave to file a counterclaim for injunctive relief. However, Prestige's Motion does not argue that the Village was not permitted to file a counterclaim in this matter. Rather, Prestige's Motion is premised on the Agreed Order acting as a complete bar to either party seeking any *temporary* relief that would modify the status quo until a final resolution of all claims through a settlement or trial.

What's more, the fact that the Agreed Order expressly states that the Village should file an answer or otherwise plead while simultaneously requiring Prestige to withdraw its Motion for Temporary Restraining Order and Preliminary Injunction supports Prestige's arguments. Specifically, the above facts show that the parties intended for the Agreed Order to serve as a substitute to either party seeking temporary relief and that the parties sought to adjudicate all disputes at a final trial on the merits.

B. *The Plain Language of the Agreed Order, and the Parties' Intent Inferred Therefrom, Make Clear that Both Parties are Barred from Seeking Any Temporary Relief During the Pendency of this Litigation*. The Village devotes a significant portion of its Response to advancing its position that the Agreed Order merely "sets limits on the Village" as to the ***administrative*** actions that may "be taken against Prestige until the Court adjudicates all the Parties' rights or until the Court orders otherwise." The Village argues that it interprets the four corners of the Agreed Order as merely preventing it from "(1) issuing a 'cease and desist' order against Prestige; (2) revoking Prestige's business license and/or occupancy permit; and (3) refusing to renew Prestige's business license and/or occupancy permit until this Court adjudicates the rights of the Parties 'or this Court orders otherwise.'" According to the Village, "Under the Agreed Order, the Village agreed not to pursue those administrative actions, which, if taken, could result in fines or administrative proceedings against Prestige." (Counterclaim at ¶ 3, p. 6). In other words, the Village argues that all it is obligated to do pursuant to the Agreed Order is "to stay its ability to enforce the Village Code and to grant Prestige temporary relief from further sanctions authorized by the Village Code." (Id.)

The assertion that the Agreed Order only intended to limit the Village from pursuing administrative remedies while maintaining the right to judicially prevent Prestige from operating its facilities is absurd. The Village's argument completely ignores the plain language in the

Preamble and Paragraph 2 of the Agreed Order wherein the Village expressly agreed that Prestige "may continue to operate its feed production equipment at its Facility located at 431 Lakeview Court … on a limited basis beginning at 9 PM and ending at 5 AM on days of operation …" (Agreed Order, at ¶ 2), and "to maintain the status quo during the pendency of the litigation." (Id. at Preamble). The Village's argument also completely ignores the fact that the basis for its Counterclaim is Prestige's alleged violations of Section 14.604; Section 14.2104; and Section 11.3401, of the Village Code of Ordinances. (Counterclaim, at ¶¶ 83-84).

The Village's argument that it is merely barred from taking administrative, as opposed to judicial, action for alleged violations arising from the Village Code of Ordinances is a distinction without any difference. Specifically, obtaining a court order granting a preliminary injunction against Prestige has the same effect as if the Village administratively issues a cease-and-desist order against Prestige or revokes Prestige's business license and/or occupancy. In all events, Prestige would be prevented from continuing to operate its feed production equipment on a limited basis in accordance with the agreed status quo set forth in the Agreed Order. If we were to accept the Village's argument, the terms of the Agreed Order would have no effect at all and would provide no benefit to Prestige in exchange for its agreement to withdraw its Motion for Temporary Restraining Order and Preliminary Injunction.

Finally, the Village calls attention to the fact that "Prestige has also not relinquished its ability to litigate Prestige's right to operate its production equipment during normal business hours because it is still seeking a declaratory judgment that, if in its favor, could result in daytime operations." (Response at ¶ 1, p. 8). This express acknowledgment, coupled with the fact that Prestige withdrew its Motion for Temporary Restraining Order and Preliminary Injunction, is demonstrative of the parties' intent for the Agreed Order to bar the parties from seeking temporary relief in this litigation. Specifically, Prestige agreed to withdraw its Motion for Temporary

Restraining Order and Preliminary Injunction and to limit its hours of production in exchange for the Village's agreement to allow Prestige to continue to operate its business "during the pendency of the litigation." The Agreed Order, when read as a whole, makes clear that both parties agreed and intended to only adjudicate their dispute at a final trial on the merits while maintaining the agreed upon status quo.

In sum, the Village's argument that the Agreed Order merely serves as a bar to *administratively* prevent the Village from taking action to stop Prestige's operations, but does not prevent the Village from seeking a temporary injunction, is not supported by the plain language of the Agreed Order or the facts of this case. Accordingly, the Counterclaim should be dismissed because it only requests preliminary injunctive relief.

C. ***The Inclusion of the, "Or the Court Orders Otherwise," Language is to Make Clear that the Parties' May Jointly Consent to Amend the Agreed Order***. The Village argues that the, "or the Court order otherwise," language demonstrates, "both parties contemplated that the conditions could change through a court order, which could affect Prestige's operations." (Response at ¶ 4, p. 8). The Village is partially correct., What the Parties did actually contemplate, was that the parties would have to engage in a voluminous discovery and then an expeditious trial in order for the court to hear and then rule upon Prestige's Motion for Temporary Restraining Order and Preliminary Injunction. To avoid such expenditure and the court resources, the parties memorialized the status quo in paragraph 2 of the Agreed Order. The inclusion of the, "or the Court orders otherwise," language does not permit either party to request preliminary injunctive relief because then the parties' conditions would revert to May 26, 2023, when Prestige filed its Motion for Temporary Restraining Order and Preliminary Injunction. When the Agreed Order is viewed as a whole, the language makes clear that the parties could submit future mutually agreed upon orders. However, the language was not intended to permit the Village a right to try to temporarily suspend Prestige's production right after Prestige surrendered the right to litigate temporary relief in its favor. Specifically, Prestige agreed to limit its production hours from 9:00 p.m. through 5:00 a.m., Those were similar to the hours that Prestige was operating prior to the filing of its Complaint and Motion for TRO. Prestige had continuously informed the Village of said hours. Prestige also withdrew at the time of the entry of the Agreed Order its right to adjudicate its rights to produce during daytime operation hours. Meanwhile, Prestige continues to invest substantial capital in purchasing and installing odor remediation equipment. The parties anticipated, and Prestige still anticipates, that an agreed order will be submitted to the Court modifying Prestige's hours of operation to daytime hours after the equipment is installed, while keeping the remainder of the language in the Agreed Order intact until a final settlement or trial.

The law governing agreed orders further supports this reading of the, "or the Court orders otherwise," language. Specifically, as set forth in the Motion, and as a matter of law, "Once an agreed order has been entered, it is generally binding on the parties and *cannot be amended or changed without the consent of both parties*." (Emphasis added.). *In re Marriage of Kelly*, 2023 IL App (3d) 220333-U, ¶ 26 (3d Dist. 2023) (citing, *In re M.M.D.*, 213 Ill.2d 105, 115 (2004)). Such orders are "conclusive on the parties and can be set aside by one party only under certain circumstances." *Cooper v. Bi-State Dev. Agency*, 158 Ill.App.3d 19, 22-23 (5th Dist. 1987). Specifically, agreed orders "can only be amended or set aside[2] by one of the parties only upon a showing that the order resulted from fraudulent misrepresentation, coercion, incompetence of one of the parties, gross disparity in the position or capacity of the parties, or newly discovered evidence." *Matter of Haber*, 99 Ill.App.3d 306, 309 (1st Dist. 1981).

[2] The Village has expressly stated that, "The Village does not seek to set aside the Agreed Order. …" (Response, at ¶3, p. 10).

Well settled Illinois authority makes clear that the Court, as a matter of law, has the ability to modify or set aside provisions of an Agreed Order if the parties so agree, or if the Court, upon proper motion, finds that proper grounds exist. Any other interpretation of this language would render the terms of the Agreed Order allowing Prestige to operate its production equipment on a limited basis and "to maintain the status quo during the pendency of the litigation" utterly meaningless. By way of illustration, if the parties were to accept the Village's reading of the language, Prestige could file a motion at any time asking the Court to enter an order modifying the Agreed Order to state that Prestige may run its production equipment 24 hours a day. Once again, such a reading of the language would produce unanticipated and illogical results.

Further, the Village argues that the use of the word "may" as opposed to "shall" is demonstrative of the parties' intention to permit the Court to modify the parties' agreement before a trial on the merits. That conclusion is unsupported by the rest of the language in the Agreed Order, and, for the reasons set forth above, would produce illogical results. Rather, it is clear that the parties use of the work "may" as opposed to "shall" is merely intended to protect Prestige from being obligated to run its equipment during those hours if it does not have a need to do so.

III. ***There is No Dispute that the Status Quo is Set by the Terms of the Agreed Order***. The Village's final argument is that it believes there is a factual dispute as to what constitutes the "status quo" because, according to the Village, "the last actual, peaceable uncontested status [is] difficult to determine." This argument is incorrect because Prestige was already running its production equipment four nights a week between the hours from 9:00 p.m. through 5:00 a.m. before filing of the Complaint and the Motion for TRO. Prestige had continuously informed the Village of said hours. For all practical purposes, only the number of days changed regarding the operation hours before and after the entry of the Agreed Order (from 4 nights to 5 nights). The parties then memorialize the status quo in paragraph 2 of the Agreed Order Hence, there is no material factual dispute that would preclude the Court interpreting and giving effect to the Agreed Order as a matter of law. Significantly, the Village expressly acknowledges that "A contractual issue can be reviewed under Section 2-619 because, 'contract construction is a question of law for the court.'" (Response at p. 5) (quoting *Coles-Moultrie Elec. Co-op v. City of Sullivan*, 304 Ill.App.3d 153, 158 (4th Dist. 1999). Here, the terms of the Agreed Order expressly establish the status quo to be maintained. Specifically, the parties agreed that Prestige would continue to operate its production equipment on a limited basis beginning at 9:00 p.m. and ending at 5:00 a.m. on days of operation until the matter was globally resolved following a trial on the merits. (See Agreed Order at ¶ 2). The entry of the Agreed Order, accordingly, was the last, actual, peaceable, uncontested status preceding the instant controversy.

The Village argues that a factual dispute exists that precludes dismissal because, according to the Village, it has "not only received a marked increase of complaints from surrounding residents; but police officers from the Mount Prospect Police Department have also reported a significant increase in the odor emitted from Prestige during their late night and early morning patrol shifts." These statements do nothing to create a factual dispute that would bar the dismissal of the preliminary injunction Counterclaim when the interpretation and enforcement of a contract are a matter of law – not fact. Further, such alleged complaints do not change the terms of the Agreed Order, nor do they modify either party's rights and obligations thereunder.

CONCLUSION

The law is clear that parties are bound by the terms of their agreed order. The Village cannot twist the intent of the parties, nor the words in the Agreed Order, solely to appease its constituents. The Village willingly entered into the Agreed Order and agreed that Prestige may continue to operate its feed production equipment at its Facility located at 431 Lakeview Court on a limited basis. Both parties agreed they would "maintain the status quo during the pendency of the litigation." Because the terms of the Agreed Order are binding upon the parties and act as a bar to the relief sought by the Village in its subsequently filed Counterclaim, the Village, as a matter of law, cannot obtain a temporary injunction against Prestige enjoining it from operating its business "during the pendency of litigation." For this reason, and the reasons set forth more fully below, the Village's Counterclaim seeking a preliminary injunction should be dismissed.

WHEREFORE, the Plaintiff, Prestige Feed Products, LLC, respectfully requests that the Court: (A) Enter an order dismissing the Defendant, the Village of Mount Prospect's, Verified Counterclaim for Preliminary Injunctive Relief pursuant to 735 ILCS 5/2-619; (B) enter an order dismissing/denying the Village of Mount Prospect's Motion for Preliminary Injunction' and (C) and for any further relief the Court deems just.

Respectfully submitted,
Prestige Feed Products, LLC

/s/ Riccardo A. DiMonte

By: ______________________________
One of their attorneys

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