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What Is Preliminary Relief In CA?

Plaintiffs are often confronted with the dilemma of prolonged litigation vis-a-vis losing their business to trademark infringement, competition, etc. Preliminary relief in some instances, along with other litigation tactics, might help such plaintiffs. Preliminary relief is a litigation tactic often deployed after receiving a temporary restraining order on an ex-parte basis by plaintiff. The success or failure of a preliminary equitable relief could help or drastically harm the litigation. In this article, we explore, in some depth, the statutory authority and criteria for seeking preliminary equitable relief.

STATUTORY AUTHORITY FOR ISSUANCE OF PRELIMINARY RELIEF

The criteria for issuance of temporary restraining order or preliminary relief are codified in the *California Code of Civil Procedure Sections 526-527.8*.

These statutes provide that in the following circumstances an injunction MAY be issued (NOT an exhaustive list):

- When it appears from the complaint that the plaintiff is entitled to the relief demanded. *CCP Section 526(1)*.
- When it appears from the complaint that the act complained of would produce waste, or great irreparable injury to a party in the action. *CCP Section 526(2)*.
- When it appears that the action or inaction complained of, if not prevented, would render the ultimate judgment in favor of plaintiff ineffective. *CCP Section 526(3)*.
- When monetary damages cannot afford adequate relief. *CCP Section 526(4)*.
- Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. *CCP Section 526(5)*.



In addition to these statutory authorities for preliminary relief, there are some statutory authorities for injunctive relief with respect to improper business practices:

- The owner of a registered trademark could enjoin the manufacture, use, imitation or sale of counterfeit or advertisements used in connection with their distribution. *Business and Professions Code Section 14245.*
- The registered owner of a mark, "that is famous and distinctive", may seek injunction against another person's commercial use of the mark or trade name. *Business and Professions Code Section 14247.*
- The owner of a trade secret may also enjoin the factual or threatened misappropriation of a trade secret. *CA Civil Code Section 3426.2.*

TESTS FOR ISSUANCE OF PRELIMINARY RELIEF

1. TRIAL COURT: The grant or denial of preliminary relief is in trial court's sound discretion, which must be considered with due consideration of many of the circumstances surrounding the particular case. *Riviello v. Journeymen Barbers etc. Union (1948) 88 CA2d 499.* Principally, the Court looks at two factors: 1- Whether the opposing party would suffer greater injury from an order granting of the preliminary relief than the moving party would receive from the denial of such relief; 2-The probability that the moving part would prevail on the merits. *King v. Meese (1987) 43 C3d 1217; IT Corp. v. County of Imperial (1983) 35 C3d 63.*

2. 9th CIRCUIT: At the 9th Circuit, two rather disparate tests are used to grant or deny preliminary injunction.

The "traditional" test requires showing that (*U.S. v Odessa Union Warehouse Co-op (9th Cir 1987) 833 F2d 172, 174; Dollar Rent A Car, Inc. v Travelers Indem. Co. (9th Cir 1985) 774 F2d 1371, 1374; Los Angeles Mem. Coliseum Comm'n v National Football League (9th Cir 1980) 634 F2d 1197, 1200*):

1. The Moving Party will suffer an irreparable injury if the injunction is not granted;
2. The Moving Party has a strong likelihood of prevailing on the merits;
3. The balance of hardships favors the Moving Party; AND
4. Granting the injunctive relief is in the public interest.

The other test requires showing that (*Wyckoff Co. v EPA (9th Cir 1986) 796 F2d 1197, 1198; Lydo Enters. v City of Las Vegas (9th Cir 1984) 745 F2d 1211, 1212*):

1. Serious questions are raised and the balance of hardship tips sharply in favor of the moving party; and
2. The moving party will probably succeed on the merits and will probably irreparable injury without injunctive relief.



BOND

Since litigation even after granting of preliminary relief or restraining order could prove to be lengthy and certainly costly for both sides, Courts often require that the moving party post a substantial bond as a precondition to issuing preliminary relief. Therefore, the financial ability of moving party to post a substantial bond should be ascertained at the outset even before embarking on such costly endeavor.

The rationale for posting a substantial bond as a sine qua non for granting preliminary relief is predicated upon balancing the interests of both moving party and the opposing party. The moving party is seeking relief from alleged harm inflicted by the opposing party. The opposing party also is incurring damages if the preliminary relief is granted. Therefore, bond provides moving party or plaintiff the notice of the damage inflicted on the opposing party if such preliminary relief is imprudently granted.

It is salient to note that, as a general practice, bond is required before grant of preliminary injunction. *CA Code of Civil Procedure Section 529.*

SALIENT NOTE

This article NEITHER supplants NOR supplements the breadth or depth of such esoteric topic. In fact, this article only provides a rudimentary analysis of such rarefied subject matter. For questions, you should contact Doron Eghbali.

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