

STATE OF MICHIGAN
COURT OF APPEALS

QUIXTAR, INC.,

Plaintiff-Appellee,

v

ORRIN WOODWARD, LAURIE WOODWARD,
CHRIS BRADY, and TERRI BRADY,

Defendants-Appellants.

UNPUBLISHED

June 30, 2009

No.'s 281092 & 283667

Kent Circuit Court

LC No. 2007-008413-CZ

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

In these consolidated appeals, defendants appeal as of right two trial court orders; the first (docket no. 281092) concerning an initial grant of a preliminary injunction and the second (docket no. 283667) concerning the extension of the preliminary injunction. We dismiss the appeals as moot.

Plaintiff is a successor in interest to Amway with regard to certain Amway assets. Defendants were Independent Business Owners (IBOs) for Amway and as such, entered into distributorship agreements with Amway. Incorporated into the distributorship agreements were Rules of Conduct that governed the IBO's. The distributorship agreements were part of the assets of Amway acquired by plaintiff.

According to plaintiff, defendants breached their distributorship agreements by violating various Rules of Conduct, including a non-compete provision, and by disclosing proprietary information. Plaintiff asserted that defendants used the proprietary information to recruit and solicit other IBO's to join them in competing with plaintiff's business. Plaintiff requested temporary and preliminary injunctive relief pending an arbitration proceeding (required by the parties' contracts), indicating that while it had filed a demand for arbitration, if defendants' solicitations and breaches of the Rules of Conduct were allowed to continue, it would be irreparably harmed before it had an opportunity to address the violations in an arbitration proceeding.

A temporary restraining order was entered prohibiting defendants from competing with or interfering with plaintiff, encouraging or soliciting other IBO's to compete with plaintiff, and disparaging plaintiff. Shortly thereafter, the trial court issued a preliminary injunction pending arbitration, opining that because the parties were involved in a legal dispute and the contracts

indicated that legal disputes were subject to arbitration, failure to provide injunctive relief pending the outcome of arbitration would frustrate the intent of the parties, as demonstrated in their written agreements. The trial court also opined that plaintiff had demonstrated a likelihood of success, and had demonstrated a likelihood of irreparable harm if the injunction were not issued.

After an arbitrator had been appointed and days before the preliminary injunction was set to expire, plaintiff moved to extend the preliminary injunction. Plaintiff explained without any discovery on when and to what extent defendants competed with plaintiff or resolution of the same by the arbitrator, it would be premature to terminate the preliminary injunction and thereby release defendants from their non-compete obligations. The trial court granted an extension of the injunction for several days to give plaintiff an opportunity to seek an extension of the injunction from the arbitrator. The order specifically provided that the injunction would remain in effect until March 25, 2008 or until modified or extended by the arbitrator, whichever occurred first. Defendants' appeals challenge the propriety of the initial preliminary injunction, and its extension. Plaintiff, on the other hand, argues that the appeals are moot because the initial preliminary injunction and its extension have expired by their own terms.

An issue is moot when an event occurs which renders it impossible for the reviewing court to grant relief. *Clinton Twp v City of Mount Clemens*, 171 Mich App 288, 292; 429 NW2d 656 (1988). As a general rule, an appellate court will not consider moot issues or decide moot cases. *East Grand Rapids School Dist v Kent Co Tax Allocation Bd*, 415 Mich 381, 390; 330 NW2d 7 (1982). An exception to the general rule is recognized, however, under circumstances where the underlying conduct is "capable of repetition, yet evades review." *Mead v Batchlor*, 435 Mich 480, 487; 460 NW2d 493 (1990). The exception applies where the following two factors exist: (1) the challenged action was incapable of being fully litigated before its expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again. *Id.*

Several panels of this court have found, in unpublished opinions, that challenges to a preliminary injunction are moot if the injunction has expired. See, e.g., *Holder v Smith Sec Corp*, unpublished opinion per curiam of the Court of Appeals, docket no.'s 207150 and 207151 (1999)("Because the preliminary injunctions have expired and permanent injunctions were entered, appellants' challenge to the earlier preliminary injunctions is moot and need not be addressed. Any challenge to the permanent injunctions is likewise moot because they too have expired.")(internal citation omitted). See also, *Funk ex rel Funk v Mikkelsen*, unpublished opinion per curiam of the Court of Appeals, docket no. 252088 (2005)("Respondent appeals as of right the order denying his motion to dismiss a personal protection order. The order has since expired and we thus dismiss the appeal as moot."). See, also *Metro Wire & Cable Co v Boggess*, unpublished opinion per curiam of the Court of Appeals, docket no. 179853 (1996)("Because the two-year period set out in the injunction has now expired, we conclude that this appeal must be dismissed as moot").

While defendants cite to *Mead v Batchlor*, 435 Mich 480, *supra*, to support their assertion that their appeals are not moot, *Mead* is dissimilar to the instant matter. In *Mead*, a defendant was held in contempt of court for failing to comply with a child support order. After holding him in contempt, the trial court abated the support order until defendant had income sufficient to make the payments. Noting that the order challenged on appeal had been abated,

our Supreme Court nevertheless elected to decide whether defendant was entitled to the assistance of counsel at a contempt proceeding, indicating, “[W]e have granted leave to appeal because the issue raised in this case is of sufficient public importance that a decision on the merits is warranted.” *Id.* at 487. The Court noted that the defendant faced possible adverse consequences even though the circuit court temporarily abated defendant's obligation to make support payments: “The finding of contempt has not been rescinded, and the circuit court, at any time, could reinstate its order directing defendant to pay support. *Id.* In the instant case, in contrast, there was no temporary abatement of the injunction and, in fact, the extended preliminary injunction dissolved by its own terms, and has remained dissolved for over a year. It appears, then, that the issues before this court challenging the propriety of the injunction and its extension are moot.

Defendants’ sole contention as to why the appeals are not moot is that plaintiff could still bring contempt proceedings against them for alleged violations of the preliminary injunction that occurred while it was in effect. True, where a court's adverse judgment may have collateral legal consequences for a defendant, the issue is not necessarily moot. *Mead v Batchlor, supra*, at 486. However, it is doubtful that defendants’ claim of possible contempt proceedings is ripe for review.

As stated in *Michigan Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 371 n 14; 716 NW2d 561 (2006), the doctrine of ripeness precludes the adjudication of contingent or hypothetical claims before an actual injury has been sustained; a matter is not ripe for judicial consideration “if it rests upon contingent future events that may not occur as anticipated or indeed may not occur at all.” Defendants have not asserted that contempt proceedings have been initiated against them. Instead, they cite the mere possibility of such proceedings as the basis for their claim that the appeals should proceed. The potential future event of contempt proceedings may not occur at all or, if it does occur, may not result in any finding of actual contempt or any punishment by the court. Defendants’ claim of a continued controversy over the now-expired preliminary injunction is dependent then, on the hypothetical situation where plaintiff initiates contempt proceedings, the trial judge issues a contempt order, the trial judge finds defendants actually in contempt, and the trial judge imposes some sort of penalty against defendants for the contempt. There is no way to anticipate whether any of these events will actually occur. Because defendants’ claim of potential collateral consequences is highly speculative, we cannot find the assertion that plaintiff’s claims are moot is defeated.

The appeals are dismissed as moot.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto