

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF
JUSTICE
SUPERIOR COURT DIVISION
17-CVS-4078

STERIMED TECHNOLOGIES
INTERNATIONAL, LTD.,

Plaintiff,

v.

INNOVATIVE HEALTHCARE
DISTRIBUTION, LLC,

Defendant.

**ORDER ON MOTION FOR
PRELIMINARY INJUNCTION**

1. Plaintiff SteriMed Technologies International, Ltd. (“SteriMed”) filed a Motion to Stay Arbitration and Emergency Motion for Temporary Restraining Order and Preliminary Injunction on March 7, 2017. For the reasons discussed below, the Court **GRANTS** the motion for preliminary injunction.

2. SteriMed filed its Verified Complaint (“Complaint”) on March 3, 2017, and served the Complaint on the registered agent for Defendant Innovative Healthcare Distribution, LLC (“Innovative”). In its Complaint, SteriMed seeks to enjoin arbitration proceedings filed by Innovative and to obtain a declaratory judgment regarding Innovative’s rights “to manufacture, market and/or resell certain medical waste remediation products manufactured by or on behalf of SteriMed . . . in various designated territories throughout the world.” (Verified Compl. p. 1 [“Compl.”].) This case was designated as a mandatory complex business case on March 6, 2017 and assigned on March 7, 2017.

3. The Court held a hearing on SteriMed's emergency motion on March 9, 2017, at which SteriMed was represented by counsel. The Court was informed that Innovative had not yet retained counsel in this matter, and no representative for Innovative appeared at the hearing. The Court entered a temporary restraining order ("TRO") against Innovative on March 9 and set a briefing schedule and a hearing for March 17 to consider converting the TRO into a preliminary injunction.

4. Innovative did not file a brief opposing SteriMed's motion, as required by the Court's March 9 scheduling order, and failed to appear at the March 17 hearing. Based on representations made by SteriMed's counsel during the hearing, it appeared that the parties had reached a tentative agreement on a consent preliminary injunction to stay the arbitration until a final decision on SteriMed's motion to stay. The Court therefore entered an order extending the TRO, directing Innovative's counsel to enter an appearance, and ordering the parties to propose a consent injunction and briefing schedule for the motion to stay. SteriMed served the March 17 scheduling order on Innovative's registered agent, but no counsel for Innovative made an appearance or otherwise complied with the Court's order.

5. The Court held a third hearing on March 24. SteriMed was represented by counsel. Again, Innovative did not make an appearance.

6. The Court concludes that SteriMed's emergency motion for preliminary injunction is ripe for resolution. Innovative has had notice of the pending motion and multiple opportunities to be heard. Its decision to forgo those opportunities does not warrant further delay.

7. Although SteriMed has requested that the Court also issue a ruling on

its pending motion for stay, the Court declines. The Court has not entertained the motion to stay on an expedited schedule, and the time for a response under the General Rules of Practice and Procedure for the North Carolina Business Court has not yet passed. *See* BCR 7.6.

8. Having considered the motion and supporting brief, the Complaint and its attachments, and the arguments of counsel at the hearing, the Court makes the following findings of fact and conclusions of law pursuant to Rule 65 of the North Carolina Rules of Civil Procedure.

FINDINGS OF FACT

9. The Court makes the following findings of fact solely for the purpose of deciding this motion. These findings are not binding on the Court in future proceedings.

10. SteriMed is a corporation authorized under the laws of the Republic of Ireland and maintains a United States business office in West Bloomfield, Michigan. (Compl. ¶ 1.) According to the Complaint, Innovative is a North Carolina limited liability company with its principal place of business located in Mecklenburg County, North Carolina. (Compl. ¶ 2.)

11. On November 22, 2016, Innovative filed a Notice of Arbitration and Statement of Claim against SteriMed before the International Centre for Dispute Resolution (“ICDR”). (Compl. ¶ 7 & Ex. A.) The Statement of Claim includes the following claims: (i) breach of contract; (ii) tortious interference with contract; and (iii) injunctive relief. (Compl. ¶ 7.) It also alleges that SteriMed and Innovative are bound by two relevant contracts: an “Authorized Reseller Agreement” dated

September 1, 2014 (the “September 1 Agreement”); and a Rider to the September 1 Agreement (“Rider Agreement”) dated September 8, 2014. (Compl. ¶ 9.) The arbitration proceeding is styled INNOVATIVE HEALTHCARE DISTRIBUTION, LLC against STERIMED TECHNOLOGIES INTERNATIONAL, LTD, Case No. 01-16-0005-1190 (“Arbitration Proceeding”).

12. Paragraph 1(a) of the September 1 Agreement provides that Innovative holds the exclusive right to resell certain “Products” to customers within the “Territory” defined by paragraph 1(d). Territory is defined to include the “Kingdom of Saudi Arabia, United Arab Emirates, Kuwait, Bahrain, Qatar, Oman, Yemen, Jordan, Palestine, Iraq, Syria, Lebanon, Egypt, Libya, Algeria, Morocco, . . . Tunisia[,] Brazil, Argentina, Peru, Venezuela, Chile, Guatemala, Cuba, Haiti, Bolivia, Dominican Republic, Honduras, Paraguay, Nicaragua, El Salvador, Costa Rica, Panama, . . . Uruguay[,] Columbia, (and) Ecuador.” (Compl. Ex. A.)

13. The September 1 Agreement includes an arbitration provision. Paragraph 11(h) states as follows:

This Agreement shall be governed by the laws of the State of North Carolina. Any controversy or claim arising out of or relating to this contract shall be determined by arbitration, conducted in Charlotte, North Carolina, in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(Compl. Ex. A.)

14. Paragraph 11(g) of the September 1 Agreement provides that “[t]his Agreement may be modified, or rights hereunder waived, only in a writing signed by

both Parties.”

15. On November 28, 2016, SteriMed, through its counsel, responded to Innovative’s Notice of Arbitration and Statement of Claim, asserting that the ICDR lacked jurisdiction. Among other things, SteriMed contends that neither the September 1 Agreement nor the Rider Agreement governs the parties’ relationship. SteriMed contends, instead, that it and Innovative executed a new agreement on September 30, 2014, entitled “Authorized Reseller Agreement” (the “September 30 Agreement”). (Compl. Ex. B.)

16. On its face, the September 30 Agreement is “made as of the 30th day of September, 2014” and does not include an arbitration provision. (Compl. Ex. B.) In addition, paragraph 1(d) defines Innovative’s sales “Territory” in a way that does not include Brazil, Argentina, Peru, Venezuela, Chile, Guatemala, Cuba, Haiti, Bolivia, Dominican Republic, Honduras, Paraguay, Nicaragua, El Salvador, Costa Rica, Panama, Uruguay, Columbia, and Ecuador. Paragraph 9(f) further states that “[t]his Agreement, together with the Exhibits hereto, contains the entire agreement between the Parties and *supersedes any prior agreement or understanding concerning the subject matter herein between the Parties . . .*” (Compl. Ex. B (emphasis added).)

17. On December 12, 2016, a representative of the ICDR informed SteriMed “that failure to participate in the arbitral proceedings would not prevent the tribunal from issuing an award that may be enforced pursuant to the New York Convention of 1958.” (Compl. Ex. C.) On February 24, 2017, the same representative e-mailed counsel for SteriMed and Innovative, stating that, “in the

absence of an agreement by the parties or a court order staying this matter, the ICDR will proceed with the administration of this matter.” (Compl. Ex. D.) The e-mail further stated that SteriMed “may submit [its] jurisdictional or arbitrability arguments to the Tribunal for determination.” (Compl. Ex. D.)

18. On March 3, 2017, SteriMed filed its Complaint seeking to restrain and enjoin the Arbitration Proceeding.

CONCLUSIONS OF LAW

19. For purposes of this Order only, the Court makes the following conclusions of law.

20. This Court has jurisdiction over this matter, and venue is proper in Mecklenburg County. *See* N.C. Gen. Stat. § 1-82.

21. A preliminary injunction is an “extraordinary measure taken by a court to preserve the status quo of the parties during litigation.” *Ridge Cmty. Inv’rs, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977). The plaintiff bears the burden to establish the “right to a preliminary injunction,” *Pruitt v. Williams*, 288 N.C. 38, 372, 218 S.E.2d 348, 351 (1975), and is entitled to relief only: “(1) if [the] plaintiff is able to show [a] *likelihood* of success on the merits of his case and (2) if [the] plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the court, issuance is necessary for the protection of [the] plaintiff’s rights during the course of litigation.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (internal quotation marks omitted).

22. “Injunctive relief is granted only when irreparable injury is real and immediate.” *Hall v. City of Morganton*, 268 N.C. 599, 600–01, 151 S.E.2d 201, 202 (1966). The plaintiff may demonstrate irreparable injury by showing that “the injury is beyond the possibility of repair or possible compensation in damages” or “that the injury is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law.” *A.E.P.*, 308 N.C. at 407, 302 S.E.2d at 763 (emphasis omitted). In addition, the trial court must weigh the potential harm a plaintiff will suffer if no injunction is entered against the potential harm to a defendant if the injunction is entered. *See Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

23. The Court concludes, in its discretion, that SteriMed has met its burden of establishing the need for a preliminary injunction. Based on the record before the Court, SteriMed has shown a likelihood of success on the merits of its claim that the September 30 Agreement governs the parties’ relationship, supersedes the September 1 Agreement, and does not include an arbitration provision.

24. The Court also concludes that SteriMed has met its burden to show that it will suffer irreparable harm in the absence of a preliminary injunction. SteriMed has no adequate remedy at law, and precedent shows that forcing a party to arbitrate in the absence of an agreement to do so is irreparable harm. *See Cold Springs Ventures, LLC v. Gilead Sciences, Inc.*, 2014 NCBC LEXIS 10, *15 (N.C. Super. Ct. Mar. 26, 2014). A preliminary injunction is therefore necessary to

protect SteriMed's rights until the Court is able to hear SteriMed's pending motion to stay on the merits.

25. In addition, the balancing of equities favors entry of a preliminary injunction. The harm to SteriMed if the Arbitration Proceeding continues is irreparable. The harm to Innovative in pausing the Arbitration Proceeding as required by this Order would be minimal.

26. Based on the foregoing findings of fact and conclusions of law, the Court **GRANTS** the motion for a temporary restraining order and **ORDERS** that:

- a. Pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, Innovative shall be enjoined from attempting to litigate in the Arbitration Proceeding.
- b. The preliminary injunction shall continue in effect until further order from this Court.
- c. The Court determines that the existing bond of \$500.00 is adequate to protect Innovative's interest. No further bond shall be required to secure this Order.
- d. Counsel for SteriMed shall serve this Order on Innovative and file a certificate of service showing the date and method of service or the date of acceptance of service and the name and service address of each person upon whom the Order has been served.

Effective this the 27th day of March 2017.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases