

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO**

HB3 LLC,

Plaintiff,

-VS-

FOXS FOOD LLC, *et al.*,

Defendants,

Case No. 22 CV 7119

Judge McIntosh

**DECISION AND ENTRY ON PLAINTIFF’S MOTION FOR TEMPORARY  
RESTRAINING ORDER**

This case came before the Court on October 14, 2022 for a hearing on Plaintiff HB3 LLC's (Plaintiff) motion for a temporary restraining order (TRO). This matter was heard as a duty matter as the assigned judge was unavailable. Michael Dillard appeared on behalf of Plaintiff. Andrew Clark appeared on behalf of Defendants Fox's Food LLC, FRG Enterprises LLC (FRG), Jeremy Fox, and Sammy's Bagels LLC. At the hearing, the Court allowed only the oral arguments of counsel and the presentation of certain documents.

“In determining whether to grant a temporary restraining order, a trial court must consider whether the movant has a strong or substantial likelihood of success on the merits of his underlying claim, whether the movant will be irreparably harmed if the order is not granted, what injury to others will be caused by the granting of the motion, and whether the public interest will be served by the granting of the motion.” *Coleman v. Wilkinson*, 147 Ohio App. 3d 357, 770 N.E.2d 637, \*358 (10th Dist.2002). The party seeking an injunction must demonstrate by clear and convincing evidence that they are entitled to relief under applicable statutory law, that an injunction is necessary to prevent irreparable harm, and that no adequate remedy at law exists. *Garb-Ko, Inc. v. Benderson*, 10th Dist. Franklin No. 12AP-430, 12AP-474, 12AP-475, 12AP-476, 2013-Ohio-

1249, ¶ 32. Clear and convincing evidence is

the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

*In re Z.N.*, ¶ 11, quoting *In re Estate of Haynes*, 25 Ohio St.3d 101, 104. No one of the four factors is dispositive; rather, a balancing test should be applied. *Intralot, Inc. v. Blair*, 10th Dist. Franklin No. 17AP-444, 2018-Ohio-3873, ¶ 31, quoting *Youngstown City School Dist. Bd. of Edn. v. State*, 10th Dist. Franklin No. 15AP-941, 2017-Ohio-555, ¶ 50.

After considering the information provided at hearing, the Court finds that Plaintiff has met its burden to demonstrate by clear and convincing evidence that it is entitled to a TRO. Accordingly, the Court issues the following orders: (1) Defendants are enjoined from abandoning and breaching the September 28, 2016 License and Supply Agreement (the “Agreement”); (2) Defendants Fox’s Food LLC and FRG are enjoined from purchasing any products covered by the Agreement from anyone other than Plaintiff; and (3) no bond is required.

**IT IS SO ORDERED.**

**Copies to all parties.**

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SIGNATURE PAGE ATTACHED

Franklin County Court of Common Pleas

**Date:** 10-14-2022

**Case Title:** HB3 LLC -VS- FOXS FOOD LLC ET AL

**Case Number:** 22CV007119

**Type:** T R O (TEMPORARY RESTRAINING ORDER) ON

It Is So Ordered.

The image shows a circular official seal of the Franklin County Court of Common Pleas, Ohio. The seal features a central shield with a scale of justice and a book, surrounded by the text "COMMON PLEAS COURT", "FRANKLIN COUNTY, OHIO", and the motto "ALL THINGS ARE POSSIBLE". A handwritten signature in black ink is written over the seal.

/s/ Judge Jaiza Page