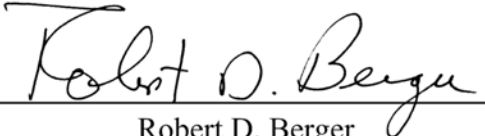


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 14th day of May, 2021.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

KENT LINDEMUTH,

Debtor.

Case No. 12-23060

Chapter 11

**JAMES LLOYD and
LLOYD & MACLAUGHLIN, LLC,**

Plaintiffs,

Adv. No. 21-6014

v.

KENT LINDEMUTH,

Defendant.

ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER

This matter comes before the Court on the motion¹ of plaintiffs James Lloyd and Lloyd & MacLaughlin, LLC (together, “Lloyd”) for a temporary restraining order and preliminary injunction against defendant Kent Lindemuth pursuant to Fed. R. Civ. P. 65, applicable to this adversary proceeding via Fed. R. Bankr. P. 7065.² Lloyd requests an order directing Lindemuth to:

1. Immediately vacate the Gage Property;³
2. Stay away from the Gage Property, including the exterior perimeter of the Gage Property and the adjacent SW Emland Drive⁴ property;
3. Cease and desist from interfering in any way with Lloyd’s management and activities concerning the Gage Property, the abandoned vehicles located at the Gage Property, and any other properties owned by the Lindemuth Entities⁵ or the Lindemuths⁶ that are under Lloyd’s authority and control;

¹ ECF 11.

² “Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).” Fed. R. Bankr. P. 7065.

³ The motion defines “Gage Property” as “the property located at 125 SW Gage Boulevard, Topeka, Kansas 66606.” ECF 11 at 2.

⁴ According to the motion, “SW Emland Drive” means thirteen vacant parcels—the parcels IDs of which are listed in the motion—adjacent to the Gage Property. ECF 11 at 11-12.

⁵ “Lindemuth Entities” appears to mean the entities listed on Schedule 1 of Lloyd’s 2017 Agent Agreement, which is attached in turn to the motion as Exhibit G. See ECF 11 at 8-9 (“On April 24, 2017, the Lindemuths, individually and in their respective capacities as owners of certain entities known as the ‘Lindemuth Entities,’ entered into a certain ‘Agent Agreement’ with Lloyd & MacLaughlin, LLC.”); ECF 11-7 (Agent Agreement).

⁶ The motion defines “Lindemuths” as Kent and his now-deceased wife, Vikki. ECF 11 at 3.

4. Cease and desist from having any contact of any kind whatsoever with third parties engaged by Lloyd who are attempting to access the Gage Property; and

5. Immediately cause any person(s) occupying the 4826 SW Topeka Blvd. Property⁷ to vacate such property and cease from causing or allowing any person(s) not authorized by Lloyd to occupy any real property owned by the Lindemuth Entities or by the Lindemuths that are under Lloyd's authority and control.⁸

“The requirements for a TRO issuance are essentially the same as those for a preliminary injunction order.” *People’s Trust Fed. Credit Union v. Nat’l Credit Union Admin. Bd.*, [350 F. Supp. 3d 1129, 1138](#) (D.N.M. 2018) (citing *Herrera v. Santa Fe. Pub. Sch.*, [792 F. Supp. 2d 1174, 1181](#) (D.N.M. 2011), and 13 *Moore’s Fed. Practice* ¶ 65.36(1), at 65-83 (3d ed. 2004)).

“A preliminary injunction is ‘an extraordinary remedy that may only be awarded upon a clear showing that the [movant] is entitled to such relief.’” *N. Mex. Dep’t of Game & Fish v. U.S. Dep’t of the Interior*, [854 F.3d 1236, 1245-46](#) (10th Cir. 2017) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, [555 U.S. 7, 22](#) (2008)). To obtain a preliminary injunction, the movant must show that:

- (1) it “is substantially likely to succeed on the merits,”
- (2) it “will suffer irreparable injury if the injunction is denied,”
- (3) its “threatened injury outweighs the injury the opposing party will suffer under the injunction,” and
- (4) “the injunction would not be adverse to the public

⁷ The motion defines “SW Topeka Blvd. Property” as “the property located at 4826 SW Topeka Boulevard, Topeka, Kansas.” ECF 11 at 2.

⁸ ECF 11 at 17-18.

interest.”

Colorado v. U.S. Emtl. Prot. Agency, [989 F.3d 874, 883](#) (10th Cir. 2021) (quoting *N. Mex. Dep’t of Game & Fish v. U.S. Dep’t of the Interior*, [854 F.3d 1236, 1246](#) (10th Cir. 2017)).⁹ Here, the Court will deny Lloyd’s request for a temporary restraining order because he has demonstrated neither a likelihood of success on the merits nor a threat of irreparable harm.

As to success on the merits, the flaw in Lloyd’s argument is simple: he has not articulated a cause of action. [Fed. R. Bankr. P. 7065](#) and [Fed. R. Civ. P. 65](#) do not create causes of action; they are procedural rules. Thus, as Lindemuth states in his motion to dismiss, “the sole claim identified in Plaintiff’s Complaint is not a claim at all.”¹⁰ Lloyd cannot demonstrate a likelihood of success on the merits of a claim without first articulating that claim. And this Court should not act as an advocate for Lloyd by articulating one for him. *Cf. N. Mex. Off-Highway Vehicle All.*

⁹ “Certain types of preliminary injunctions are disfavored and require a movant to satisfy a heightened standard.” *Colorado v. U.S. Emtl. Prot. Agency*, [989 F.3d at 883](#) (quoting *N. Mex. Dep’t of Game & Fish*, [854 F.3d at 1246](#) n.15). “They are ‘(1) preliminary injunctions that alter the status quo; (2) mandatory [as opposed to prohibitory] preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits.’” *Id.* at 883-84. “When seeking a disfavored injunction, the movant ‘must make a strong showing’ both on the likelihood of success on the merits and on the balance of the harms.” *Id.* at 884 (quoting *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, [389 F.3d 973, 976](#) (10th Cir. 2004) (en banc)).

The Court need not consider this heightened standard here because Lloyd’s motion for a temporary restraining order fails without it. However, because the injunction sought by Lloyd appears “disfavored” in all three ways articulated by the Tenth Circuit, he should be prepared to address this heightened standard if he wishes to proceed with his request for a preliminary injunction.

¹⁰ ECF 10 at 1.

v. U.S. Forest Serv., 645 Fed. App'x 795, 803 (10th Cir. 2016) (“We do not act as advocates for parties, and we will not typically search out the facts necessary to support a litigant’s position.” (quoting *Ford v. West*, 222 F.3d 767, 777 (10th Cir. 2000))). Because Lloyd has not demonstrated a likelihood of success on the merits, the Court must therefore deny his request for a temporary restraining order.

Furthermore, “[t]o merit preliminary injunctive relief, a movant must present a ‘significant risk’ it ‘will experience harm that cannot be compensated after the fact by money damages.’” *Colorado v. U.S. Env'tl. Prot. Agency*, 989 F.3d at 884 (quoting *N. Mex. Dep't of Game & Fish*, 854 F.3d at 1250). “That harm ‘must be both certain and great,’ not ‘merely serious or substantial.’” *Id.* (quoting *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001)). “The injury must also be ‘of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.’” *Id.* (quoting *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2003)).

As to irreparable harm, Lloyd argues:

If Mr. Lindemuth is not enjoined from interfering with Lloyd’s efforts to clean up the Gage Property and dispose of the abandoned vehicles, Lloyd will be unable to do what is necessary to timely and adequately correct the Code violations issued by the City of Topeka, thereby subjecting Lindemuth, Inc., a reorganized debtor, and the Property to administrative penalties and abatement by the City. . . . Further, assuming there is a buyer willing to purchase the Gage Property in its current condition, Lloyd will almost certainly be required to liquidate the Gage Property at significantly less than its fair market value as a direct result of Mr. Lindemuth’s actions. Such significant loss can be avoided by an injunction. Also, with the requested injunctive relief, Lloyd will be able to

develop a clear plan and path to present to the insurance company in response to its request to inspect the Property so that coverage may continue. In addition, without the requested injunction, Lloyd will not be able to obtain the Vehicle Identification Numbers from the abandoned vehicles, which is imperative for obtaining transferable titles in order to monetize the vehicles. The fair value of such vehicles will never be known or realized until transferable titles can be obtained. At the same time, Mr. Lindemuth's actions have required and will continue [to] require Lloyd to needlessly expend limited assets of Lindemuth, Inc. to dispose of such distressed assets.¹¹

However, unlike the parties in the cases Lloyd cites, Lindemuth is (to the Court's knowledge) solvent. Without any showing that creditors will be harmed by Lindemuth's actions, Lloyd has not demonstrated why the harm he describes cannot be compensated after the fact with money. *Cf. Rosen v. Andresen (In re Andresen)*, [2006 Bankr. LEXIS 4204](#), at *21-23 (Bankr. D. Md. Nov. 1, 2006) ("Because the estate is insolvent (i.e., creditors will not be paid in full and no distribution will be made to the Debtor), the wasted estate resources incurred while the Trustee chases the Debtor's proverbial wild geese causes irreparable harm to creditors."). Because Lloyd has not, therefore, demonstrated irreparable injury in the absence of a temporary restraining order, his request for one must be denied on that basis as well.

For the reasons set out in this order, Lloyd's motion for a temporary restraining order and preliminary injunction will be denied in part:

- (1) The request for a temporary restraining order is hereby denied, and

¹¹ ECF 11 at 19.

- (2) The request for a preliminary injunction will be set for status conference in a separate order.

IT IS SO ORDERED.¹²

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¹² Although the factors considered in ruling on a temporary restraining order mirror those on motions for a preliminary injunction and final injunctive relief, it must be remembered that the court's findings on an application for a temporary restraining order do not represent an adjudication on the merits. Thus, they are not binding on the parties in the later action for a permanent injunction.

11A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2951 (3d ed. 2021).