

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-1710 & 22-1885

GOLDEN FORTUNE IMPORT & EXPORT CORPORATION,

v.

MEI-XIN LIMITED; MAXIM CATERERS LIMITED
Appellants

On Appeal from the United States
District Court for the District of New Jersey
(Civil No. 2:22-CV-01369)
District Judge: Honorable Julien Xavier Neals

Submitted Under Third Circuit L.A.R. 34.1(a)
August 4, 2022

Before: GREENAWAY, JR., MATEY, and NYGAARD, *Circuit Judges*.

(Opinion Filed: August 5, 2022)

OPINION*

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7,
does not constitute binding precedent.

GREENAWAY, JR., *Circuit Judge*.

When evaluating a motion for a preliminary injunction, the gatekeeping issues to resolve are whether the movant is likely to be successful on the merits and is more likely than not to suffer irreparable harm should we deny its request. Here, Golden Fortune Import & Export Corporation (“Golden Fortune”) argues that it satisfies every requirement to secure a preliminary injunction against the termination of its Distribution Agreement (“Agreement”) with Mei-Xin (Hong Kong) Limited (“Mei-Xin”). We disagree. We will reverse based on Golden Fortune’s failure to show a likelihood of success on the merits and irreparable harm.

I. BACKGROUND

Plaintiff-Appellee Golden Fortune is a distributor of Asian groceries—and quite a successful one at that. Boasting over “40 years of experience sourcing high quality products,” it imports and distributes 1,599 products from over 150 brands, including its own stand-alone brand, throughout the United States. J.A. 723 ¶¶ 4-5. It also offers service logistics, marketing, and warehousing services to its customers.

Defendant-Appellant Mei-Xin is a Hong Kong company that manufactures internationally renowned mooncakes¹ and other pre-packaged bakery products. When

¹ A mooncake “is the quintessential food consumed and/or gifted during one of China’s most important holidays—the Mid-Autumn Festival”—which “takes place annually, falling sometime between September and October.” J.A. 179 ¶ 17.

Mei-Xin decided to expand to the United States in 2000, it engaged Golden Fortune along with another company² to distribute its products and to develop a market for the brand there. Through their two-decade-long business relationship, Golden Fortune has enabled Mei-Xin to become the number one mooncake brand in the eastern United States. Golden Fortune has benefited as well. In the only fiscal year for which Golden Fortune provided its financial information (September 1, 2018 to August 31, 2019), Mei-Xin products accounted for \$3,959,887—or 8.6%—of Golden Fortune’s \$45,720,201 in gross sales.

In 2021, the parties entered their most recent Distribution Agreement, which is the subject of this appeal. As relevant here, the Agreement provides that Golden Fortune will sell Mei-Xin “Mooncakes and Pre-packaged Bakery Products” in the eastern United States and Panama. J.A. 225 §§ 4-5. It covers the period from May 1, 2021 to April 30, 2022. There are two means for early termination. First, either party has the “right to terminate this Agreement during the Term by giving the other thirty-day (30) day [*sic*] written notice.” J.A. 229 § 7.1. Second, Mei-Xin has the unilateral right to “terminate . . . immediately without notice” if Golden Fortune fails to comply with “any provision.” J.A. 229 § 7.2(a). In addition, the Agreement contains an arbitration clause providing for

² Chevalier International (USA) Inc. was responsible for the western United States, while Golden Fortune was responsible for the eastern United States.

the arbitration of “[a]ny dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof.” J.A. 231 § 20.

In 2017, Golden Fortune’s annual sales growth of Mei-Xin’s products began experiencing a significant decline. In 2020, Mei-Xin warned Golden Fortune that it would exercise its discretion to replace Golden Fortune with another distributor if there was not adequate improvement. When that improvement did not occur, Mei-Xin purported to terminate the Agreement via email on January 21, 2022. Golden Fortune asserted that the termination was insufficient under Sections 7.1 and 11 of the Agreement, prompting Mei-Xin to send another notice of termination on March 3, 2022.

This time, Golden Fortune claimed that the termination was invalid under the New Jersey Franchise Practices Act (“NJFPA”). The NJFPA “define[s] the relationship and responsibilities of franchisors and franchisees in connection with franchise arrangements.” N.J. Stat. Ann. § 56:10-2 [hereinafter § 56:10-2]. It was enacted “to protect franchisees from unreasonable termination by franchisors that may result from a disparity of bargaining power[.]” *Id.* Consistent with its protective purpose, it prohibits franchisors from terminating a franchise “without good cause.” § 56:10-5. In Golden Fortune’s view, Mei-Xin failed to satisfy the good cause requirement.

Asserting that the NJFPA is inapplicable, Mei-Xin reiterated its purported termination and engaged a replacement distributor. In response, Golden Fortune commenced this action in the District Court for the District of New Jersey on March 14,

2022 against Mei-Xin and its parent company, Maxim’s Caterers Limited (“Maxim’s”). Golden Fortune alleged three causes of action: (1) violation of the NJFPA, (2) breach of the implied covenant of good faith and fair dealing, and (3) tortious interference. In addition, Golden Fortune sought a declaratory judgment that it continues to be Mei-Xin’s exclusive distributor and that all previous termination efforts were invalid. Lastly, Golden Fortune filed a motion for a preliminary injunction seeking to prohibit Mei-Xin and Maxim’s from terminating the Distribution Agreement and from engaging any other distributor in the eastern United States.

Although it found that the dispute was arbitrable, the District Court granted Golden Fortune’s motion for a preliminary injunction. The District Court ordered that the parties enter an “alternative security arrangement” under which Golden Fortune would purchase 17% more product annually from Mei-Xin. J.A. 44-45. The preliminary injunction and security agreement are to remain effective until the parties complete arbitration. On April 18, 2022, Mei-Xin and Maxim’s filed a timely notice of appeal.

II. JURISDICTION AND STANDARD OF REVIEW

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(2). This Court has jurisdiction pursuant to 28 U.S.C. § 1292(a).

“In reviewing the grant or denial of a preliminary injunction, we employ a tripartite standard of review: findings of fact are reviewed for clear error, legal conclusions are reviewed de novo, and the decision to grant or deny an injunction is

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