IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

HARCO NATIONAL INSURANCE COMPANY	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:24-CV-01134-O**
	§	
GASPARD & MENON CONSTRUCTION, LLC, ET AL.,	§	
	§	
	§	
Defendants.	§	

ORDER

Before the Court are Plaintiff's Application for a Preliminary Injunction (ECF No. 2), filed November 20, 2024; Defendants' Response and Appendix in Support (ECF Nos. 18–19), filed January 27, 2025; and Plaintiff's Reply (ECF No. 20), filed February 5, 2025. Also before the Court are Plaintiff's Supplemental Pleading (ECF No. 23), filed February 13, 2025; Defendants' Response and Appendix in Support (ECF Nos. 24–25), filed March 7, 2025; and Plaintiff's Reply (ECF No. 26), filed March 21, 2025. Having considered the Motion, briefing, and applicable law, the Court determines that Plaintiff's Application for Preliminary Injunction is **DENIED.**

I. BACKGROUND[1]

Harco National Insurance ("Plaintiff") entered into an indemnity agreement with Gaspard & Menon Construction LLC and the other named defendants ("Defendants") for bonds for Defendants' building projects. The bonds are secured by collateral held by Plaintiff. The parties indemnity agreement requires Defendants to "exonerate, indemnify, and keep indemnified [Plaintiff] . . . from and against any and all such losses and/or expenses which [Plaintiff] *may*

[1] Unless otherwise cited, the Court's recitation of the facts is taken from Plaintiff's Complaint. *See* Pl.'s Compl., ECF No. 1.

sustain."[2] The agreement further states that upon Plaintiff's demand Defendants shall "promptly procure the full and complete discharge of [Plaintiff] from any Bonds specified in such request and all potential liability by reason of such Bonds."[3] Third parties represented to Plaintiff that Defendants are delinquent on costs and damages amounting to more than the value of Plaintiff's collateral. In this action, Plaintiff is seeking to enforce the surety agreement with Defendants, by increasing collateral and accessing Defendants' financial records.

II. LEGAL STANDARD

A preliminary injunction is an "extraordinary remedy" and will be granted only if the movants carry their burden on all four requirements. *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008) (quoting *Planned Parenthood of Hous. & Se. Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005)); *see also* FED. R. CIV. P. 65(a). The Court should issue a preliminary injunction only if the movants establish (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) that the balance of hardships weighs in their favor; and (4) that the issuance of the preliminary injunction will not disserve the public interest. *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013). "The decision to grant or deny a preliminary injunction is discretionary with the district court." *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985). The movant must make a clear showing that the injunction is warranted, and the issuance of a preliminary injunction "is to be treated as the exception rather than the rule." *Id.*

III. ANALYSIS

A preliminary injunction is an extraordinary remedy that serves to maintain the status quo, which serves as a bridge to enable litigation without parties suffering further injury. The burden

[2] Pl.'s Mot. Prelim. Inj. 3, ECF No. 2 (emphasis added).
[3] *Id.* at 4

rests on a plaintiff to demonstrate the need for a court to enjoin a defendant. Plaintiff requests this Court preliminarily enjoin Defendants because they "anticipate loses." In effect, Plaintiff seeks to "put [Defendants] out of business."[4] An increase in surety "would prevent [Defendant] from qualifying for the credit/loans it needs to continue its business operations."[5] While Plaintiff may be able to prevail at the end of this litigation, equitable relief in the form of a preliminary injunction is not available. For the following reasons Plaintiff's Motion for Preliminary Injunction is **DENIED**.

1. Likelihood of Success on the Merits

First, Plaintiff must demonstrate a substantial likelihood of success on the merits for a preliminary injunction to be granted. "[S]peculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *W. Sur. Co. v. PASI of LA, Inc.*, 334 F. Supp. 3d 764, 791 (M.D. La. 2018). Plaintiff only "anticipates" damages and clarifies that damages are not yet realized.[6] These "anticipate[d]" damages are in excess of six million dollars.[7] This figure is based on representations made to Plaintiff by third parties.[8]

However, in a letter to that third party, Plaintiff rejected its accusations.[9] The factual record before the Court therefore shows Plaintiff opposed the same rationale it now uses to increasing the collateral. The only realized damages incurred by Plaintiff to date is $1,094.08, that is, the unpaid amount Plaintiff billed Defendant to investigate if Defendant was delinquent.[10] Given these facts

[4] Defs.' Resp. 13, ECF No. 18.
[5] *Id.*
[6] Pl.'s Mot. Prelim. Inj. 7, ECF No. 2.
[7] *Id.*
[8] *Id.*
[9] Defs.' App. in Supp. Resp. 8, ECF No. 19 ("Harco hereby reaffirms its denial of [third party]'s claim.").
[10] Pl.'s Mot. Prelim. Inj. 7–8, ECF No. 2.

Plaintiff has not carried its burden to show substantial likelihood of success on the merits because Plaintiff's injury is speculative.

2. Irreparable Harm

Second, to be entitled to preliminary injunction, Plaintiff must demonstrate harm beyond monetary damages. Courts issue preliminary injunctions to prevent harm that cannot be remedied by financial awards to a plaintiff. *Interox Am. v. PPG Indus., Inc.*, 736 F.2d 194, 202 (5th Cir. 1984) ("An injury is irreparable if it cannot be undone through monetary remedies."). "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Morgan v. Fletcher*, 518 F.2d 236, 240 (5th Cir. 1975). Here, Plaintiff's only injury is a financial harm, which is only anticipated. Plaintiff has made no argument that the denial of a preliminary injunction will result in any non-monetary damages. Plaintiff's supplemental request to access Defendants books and records identifies *no harm*, much less irreparable harm to Plaintiff.[11] Thus, Plaintiff has failed to demonstrate irreparable harm, and this factor does not support a preliminary injunction.

3. Balance of Hardships

Third, the Court considers the balance of hardship, which favors Defendant. In the third factor for preliminary injunction "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (internal quotation marks and citation omitted). Here, Plaintiff's request will disable Defendants' ability to conduct business. Moreover, Plaintiff is currently secured by Defendants bonds of trust valued in the region of two million dollars.[12] Thus, Defendants have deposited amounts in collateral commensurate with the liability Plaintiff is

[11] Pl.'s Supp. to Mot. Prelim. Inj. 7–8, ECF No. 23.
[12] Pl.'s Mot. Prelim. Inj. 7, ECF No. 2

currently exposed. Increasing collateral would significantly burden Defendants. Given these facts, the balance of hardships significantly favors Defendants.

4. Public Interest

Fourth and finally, the last factor, the public interest, also favors Defendants. "If, however, the only relief sought is legal in nature, such as damages or the collection of a debt, equitable preliminary relief is not available." *Jonibach Mgmt. Tr. v. Wartburg Enterprises, Inc.*, No. CIV.A. H-10-600, 2010 WL 770023, at *2 (S.D. Tex. Mar. 2, 2010). While Plaintiff argues it is seeking specific performance instead of damages, Plaintiff's request is "legal in nature" because it is purely monetary. Because Plaintiff is seeking monetary damages and anticipated collection of debt not yet realized, the public interest favors Defendants.

IV. CONCLUSION

Because Plaintiff cannot carry its burden on the four elements, the Court **DENIES** Plaintiff's application for preliminary injunction. ECF No. 2.

SO ORDERED this **23rd day** of **April, 2025**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE