

CAUSE NO. 40852-S

STROUHAL'S TIRE RECAPPING  
PLANT, INC.

V.

PREFERRED CAPITAL, INC.  
d/b/a  
PREFERRED CAPITAL OF  
OHIO, INC.

Defendant

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IN THE DISTRICT COURT OF

WHARTON COUNTY, TEXAS

329<sup>th</sup> JUDICIAL DISTRICT

TEMPORARY INJUNCTION

Plaintiff, Strouhal's Tire Recapping Plant, Inc. ("Strouhal") has applied for a Temporary Restraining Order, Temporary Injunction and Permanent Injunction together with their Verified Petition for Injunctive Relief and damages. The application is supported by the affidavit of Gene Strouhal. On March 2, 2006 a hearing was held and record made on Plaintiff's Motion for Temporary Injunction.

1. *Appearances*

Plaintiff Strouhal's Tire Recapping Plant, Inc., appeared through its counsel of record.

Defendant, Preferred Capital, Inc., appeared through its counsel of record.

2. *Jurisdiction*

The court, after examining the record, finds that all necessary prerequisite of the law have been legally satisfied and that the Court has jurisdiction of this case and of all the parties.

**FILED**  
at 9:31 o'clock A M.

MAR 02 2006

DENICE KUCERA MALUTA  
DISTRICT CLERK, WHARTON CO. TEXAS  
By JRC Deputy

3. *Elements for Temporary Injunction.*

After reviewing the pleadings and all attachments and exhibits, the Court finds that Plaintiff has stated a valid cause of action against Defendant, and that it has a probable right of recovery on a portion of its causes of action, and that it faces a probable, imminent and irreparable harm in the absence of this Temporary Injunction insofar as it appears likely that the enforcement of the judgment of the Ohio court against Plaintiff will immediately, irrevocably and permanently affect Plaintiff's ability to conduct its business, while causing severe financial impact to Plaintiff, as well, by permanently damaging the good will established in Plaintiff by the Strouhal family since 1926. Based upon the February 22, 2006 docket announcement of the Ohio Supreme Court the judgment which Defendant seeks to enforce may, in fact, be set aside or otherwise invalidated by that court. Alternatively, the rights of the parties will likely be decided before that time in trial before this Court.

4. *Temporary Injunction*

It clearly appears from the facts set forth that immediate and irreparable injury will result to Plaintiff unless Defendant is enjoined as prayed for in Plaintiff's Petition. Unless Defendants are enjoined, Plaintiff will have inadequate remedy at law because Defendant will continue to report negatively and disparagingly to credit reporting and rating bureaus throughout the country. In addition, Plaintiff has shown itself equitably entitled to a temporary injunction against Defendant enjoining the enforcement by Defendant of any foreign judgment it may have obtained against Plaintiff.

Upon review of the actions of the Texas Attorney General and the decision

rendered by the 270<sup>th</sup> Judicial District Court of Harris County, Texas, it clearly appears that no valid foreign judgment can be had against Plaintiff in connection with a NorVergence contract. In addition, it clearly appears that certain courts of the State of Ohio have found that action filed there by Preferred Capital, Inc against residents of other states, and which are also based upon the NorVergence Equipment Rental Agreements should be dismissed for lack of personal jurisdiction. On February 22, 2006 the Ohio Supreme Court announced that it would accept the appeal of conflicting intermediate appeal court decisions in that state on that issue. Accordingly, Plaintiff is entitled to protection against any judgment that the state from which the default judgment was obtained would itself not enforce such judgment.

Unless and until Defendant can demonstrate that, in spite of the rulings of Texas courts; the opinion of the Texas Attorney General; and the applicable laws of the State of Texas, any judgment obtained against Plaintiff in a foreign jurisdiction should be recognized by a Texas court, Preferred Capital, Inc., its agents and assigns shall be enjoined from any attempts to collect such foreign judgment.

The Court finds that granting the equitable relief requested is reasonable under the circumstances, and necessary to protect Plaintiff's legitimate business interest. Plaintiff therefore, is entitled to the Temporary Restraining Order as granted herein.

IT IS THEREFORE, ORDERED, that individual Defendant Preferred Capital, Inc. d/b/a Preferred Capital, Inc. of Ohio, an Ohio corporation, its agents, affiliates, servants, employees and attorneys and those persons or entities in active concert or

participation with Defendant, who receive actual notice of this Order by personal service or otherwise be and they are hereby enjoined from: (a) in any form or manner communicating to, reporting to, or in any way providing or submitting to any credit reporting agency or similar entity or institution any information which will result in a negative impact on the credit rating or history of Plaintiff Strouhal's Tire Recapping Plant, Inc, its agents, affiliates, servants, or employees; and (b) seeking to enforce, or in any way collect or otherwise commence actions to collect against Plaintiff Strouhal's Tire Re-Capping Plant, Inc. and Gene Strouhal, and judgment of any foreign court.

IT IS FURTHER ORDERED that this Temporary Injunction shall be binding upon Defendant, its officers, directors, members, agents, servants, heirs, executors, employees and attorneys and upon those persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise.

5. *Duration*

This Order shall be in force and effect until a judgment is rendered in this case becomes final or until further order of this Court.

6. *Bond*

Bond required or plaintiff is set at \$ 500<sup>00</sup>.

7. *Trial Setting*

The courts sets this case for trial on the merits of the ultimate relief sought on

December 4, 2006, at 9:00 a.m.

8. *Issuance of Writ*

When this temporary injunction and bond have been filed, the clerk is ORDERED

to issue the Writ of Temporary Injunction in conformity with the terms of this Order, and deliver same to the sheriff or any constable of the county of residence of the party enjoined, or to the applicant, as the latter shall direct.

SIGNED this 2<sup>nd</sup> day of March, 2006.

15/Daniel R Shlar  
JUDGE PRESIDING