

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SMART TECHNOLOGIES ULC,
Plaintiff,
v.
RAPT TOUCH IRELAND LTD, et al.,
Defendants.

Case No. 16-cv-03531-VC

**ORDER DENYING APPLICATION
FOR TEMPORARY RESTRAINING
ORDER; ORDER TO SHOW CAUSE
WHY CASE SHOULD NOT BE
DISMISSED**

Re: Dkt. No. 7

SMART's application for a temporary restraining order is denied. A federal court's issuance of emergency relief is a matter of discretion, and an injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *see id.* at 24; *Standard Innovation Corp. v. Lelo (Shanghai) Trading Co.*, No. 15-cv-04858-BLF, 2015 WL 6828317, at *1 (N.D. Cal. Nov. 6, 2015). SMART has not shown an urgent need for a federal court to exercise its discretion to award interim relief.

The contract underlying this dispute contains an arbitration provision that the parties agree applies here. It's true that, notwithstanding the arbitration provision, the contract allows the parties to seek emergency relief from a court in certain limited circumstances. But as SMART's lawyer admitted at the hearing on the TRO application, the arbitration rules allow SMART to request emergency relief from an arbitrator as well. Under those rules, an emergency arbitrator would be assigned within a day, and a schedule would be set for considering the application for relief within a handful of days. The rules also allow for procedures (such as

giving notice to the opposing party by email, and the use of video conferencing instead of in-person hearings) that are not necessarily available in court.

With the parties having agreed that their underlying dispute should be arbitrated, SMART has offered no explanation for why a federal court (rather than an arbitrator) should adjudicate the request for emergency relief. Indeed, the only justification SMART's lawyer gave at the hearing for asking a federal court rather than an arbitrator to dive into this dispute at the preliminary stage was his belief that a federal court would be more likely to issue a TRO *automatically*. Even if that were true (and it certainly shouldn't be), it would not be a good reason for a federal court to get involved in a dispute whose merits both parties agree should be arbitrated.

Accordingly, the Court declines to exercise its discretion to issue preliminary relief. *Cf. ADESA, Inc., v. Berkowitz*, No. 14-cv-04022-VC, Dkt. No. 47, at 3 (N.D. Cal. Jan. 21, 2015). In light of this ruling, the case should presumably be dismissed without prejudice. If SMART agrees, it should file a voluntary dismissal no later than Monday, July 18, 2016. If SMART disagrees, it should submit a brief of no more than five pages by that same date explaining why it believes the case should not be dismissed.

IT IS SO ORDERED.

Dated: July 15, 2016



VINCE CHHABRIA
United States District Judge