

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

J. MICHAEL HAND,

Plaintiff,

vs.

Case No. 10-1296-SAC

WALNUT VALLEY SAILING CLUB,

Defendant.

MEMORANDUM AND ORDER

This case comes before the Court on plaintiff's motion for a permanent injunction under Rule 64(d). Dk. 24. Defendant opposes the motion.

Plaintiff has failed to show he is entitled to permanent injunctive relief.

For a party to obtain a permanent injunction, it must prove: (1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007).

Southwest Stainless, LP v. Sappington, 582 F.3d 1176, 1191 (10th Cir. 2009).

Because plaintiff's motion and supporting memorandum fail to address or even recognize these required elements, his motion must be denied.

Additionally, plaintiff's request for a permanent injunction is premature. The record indicates that discovery is ongoing, Dk. 13, and that plaintiff has not yet been deposed, Dk. 30. Because the facts crucial to the merits of the case have not yet been established, no decision on the merits of this case is possible.

Lastly, plaintiff's reply brief alludes to his motion for a permanent injunction as a

“motion for summary judgment.” Dk. 32. Changing the name of plaintiff’s motion does not change its nature. “[A party] cannot change the nature of his motion by changing its title any more than one can make a bull a cow by giving it a female name ... Thus, we analyze the [party’s] motion for what it is ... (Citation omitted). *State v. Smith*, 19 Conn. App. 646, 648, 563 A.2d 1034, *cert. denied*, 213 Conn. 806, 567 A.2d 836 (1989).

IT IS THEREFORE ORDERED that plaintiff’s motion for issuance of a permanent injunction (Dk. 24) is denied.

Dated this 17th day of May, 2011.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge