

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNIQUE PAVING)	CASE NO. 1:07 CV 2501
MATERIALS CORP., et al.,)	
)	
Plaintiffs,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
ANTHONY J. FARGNOLI, et al.,)	<u>Memorandum of Opinion and Order</u>
)	
Defendants.)	

This matter is before the Court upon plaintiffs’ motion to vacate the Court’s October 2, 2007 Order denying plaintiffs’ motion for a preliminary injunction. (Doc. 9) This case arises out of defendant Anthony Fagnoli’s employment with defendant Lafarge North America, Inc. For the reasons that follow, the motion to vacate is DENIED.

Plaintiffs commenced this action in state court and simultaneously moved for a preliminary injunction. Defendants subsequently removed the action to this Court and filed an opposition to the motion for preliminary injunction. Plaintiffs choose not to file a reply. As stated in this Court’s October 2 Order, plaintiffs’ motion was devoid of the support necessary to establish the need for a preliminary injunction. Plaintiffs made no attempt to establish a likelihood of success on the merits, much less the other three factors the Court must consider.

Plaintiffs now seek a second opportunity to present their arguments and evidence, asserting that they “were given no notice that their Motion for Preliminary Injunction would be heard, considered and decided solely upon” the evidence provided in support of the motion. Such an argument is specious, at best. When a party presents a motion to the Court, it is expected that the motion be fully supported. It was plaintiffs’ burden to provide the Court with the evidence they deemed necessary to a decision “based upon consideration of all the facts.” For plaintiffs to assert that they must be given advance notice that a motion they chose to present would be decided upon is disingenuous. The Court will not now permit plaintiffs to have a proverbial second bite at the apple.

For the foregoing reasons, plaintiffs’ motion to vacate is DENIED.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 10/18/07