

Nos. 1-11-0442 and 1-11-1135 Consolidated

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

K2 DEVELOPMENT, LLC II,)	Appeal from the Circuit Court
)	of Cook County
Plaintiff-Appellee,)	
)	
v.)	
)	06 CH 21885
KIM BRAUNSTEIN,)	
)	
Defendant-Appellant.)	Honorable
)	Mary Anne Mason,
)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

- ¶ 1 HELD: After the bankruptcy auction of the subject property, this appeal of an injunction related to that property is moot.
- ¶ 2 Defendant Kim Braunstein appeals the trial court's entry of an injunction enjoining him from taking any action designed to affect or impair plaintiff K2 Development, LLC II's (K2) title to certain property in Orland Park, Illinois. Defendant argues that the trial court abused its discretion in issuing the injunction because the injunction was insufficiently specific, improperly restricted his rights, and K2 had an adequate remedy at law.

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¶ 3 The circumstances of this appeal arose following the trial court's issuance of its memorandum opinion and order in December 2010 following a bench trial. The judgment of the bench trial is the subject of a separate related appeal. See Nos. 1-10-3672, 1-11-0338 and 1-11-0648 (Consolidated), *K2 Development, LLC II v. Braunstein*. Accordingly, we will only discuss the facts necessary for resolution of the discrete issue presented on appeal.

¶ 4 In its written opinion and order, the trial court found that Braunstein had defrauded K2 in connection with a real estate transaction. The parties had entered into an agreement to purchase an undeveloped property located at 16600 LaGrange Road in Orland Park. This property consisted of two parcels of land with two PIN numbers, 27-21-403-008-000 (008 parcel) and 27-21-403-010-000 (010 parcel). In the transaction, K2 believed that Braunstein was conveying both parcels, but Braunstein failed to do so and retained title for the 008 parcel. The trial court held that Braunstein defrauded K2 by conveying only a portion of the property and reformed the deed and vested title in K2. The court denied K2's initial request for an injunction as "unnecessary," noting that "[b]y virtue of issuance of the judicial deed extinguishing any and all rights of Braunstein in the 008 Parcel, Braunstein, and anyone acting in concert with him, cannot take any further action against K2 or the 008 and 010 Parcels of the La Grange Road property."

¶ 5 On January 6, 2011, Braunstein recorded a *lis pendens* with the Cook County Recorder of Deeds against the 008 parcel. K2 and the trial court learned of the *lis pendens* on January 18, 2011. On K2's motion, the trial court entered an order enjoining Braunstein or any person acting in concert with him "from taking any action relating to the La Grange Property (PIN #27-21-403-008-000 and 27-21-403-010-000)." The order also stated that "this injunction does not apply to

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Braunstein's right to file any pleading or motion with any court." The court ordered Braunstein to file a release of the *lis pendens*. Instead, Braunstein filed a separate action in the law division of the circuit court, seeking to enjoin K2 from selling or otherwise transferring the LaGrange property. K2 filed a petition for rule to show cause against Braunstein for violating the injunction order.

¶ 6 In March 2011, Braunstein filed a motion for clarification and amendment of the injunction order, contending that the injunction constrained his civil liberties and lacked specificity. In April 2011, the trial court issued a written order for an injunction against Braunstein. The court specifically found that K2 had an ascertainable right in need of protection, K2 would suffer irreparable injury in the absence of injunctive relief, K2 has no adequate remedy at law, and "K2 is not only likely to succeed on the merits; it already has." The court then held that

"Braunstein and anyone acting in concert with him, is hereby enjoined from taking any action designed to affect or impair K2's title to the La Grange Property (PIN Nos. 27-21-403-008-000 and 27-21-403-010-000), including filing a *lis pendens* and commencing or pursuing other litigation, with the sole exception that Braunstein may pursue any appeal from the Court's judgment in this case."

¶ 7 This appeal followed.

¶ 8 Initially, we must consider whether the issue raised on appeal remains a live controversy

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in which we can grant effectual relief. After Braunstein filed his notice of appeal of the April 2011 injunction order, this appeal was stayed during the pendency of Braunstein's bankruptcy proceedings. We must determine whether the actions in the bankruptcy case have rendered this appeal moot.

¶ 9 "A reviewing court will decide only actual controversies in which the interests or rights of the parties can be granted effectual relief." *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 334-35 (2001). "An appeal becomes moot when a court can no longer effect the relief originally sought by an appellant or when the substantial question involved in the trial court no longer exists." *Petersen*, 319 Ill. App. 3d at 335.

¶ 10 "When 'intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party', then the appeal, and issues therein, are considered moot." *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007) (quoting *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006)). " 'The fact that a case is pending on appeal when the events which render an issue moot occur does not alter this conclusion.' " *Felzak*, 226 Ill. 2d at 392 (quoting *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116-17 (1992)).

¶ 11 Here, the LaGrange property, as well as all of Braunstein's rights, claims and interests against K2, including this appeal, were sold at auction and the sale was approved by the bankruptcy judge in July 2011. Braunstein appealed to the United States District Court, Northern District of Illinois, and the portion of his appeal regarding the validity of the sale was dismissed on the motion of the trustee of the bankruptcy estate in May 2012. *Braunstein v. Waller*, 2012 WL 1802145. The only issue considered by the district court was whether the bankruptcy court

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erred in denying Braunstein's motion to convert his Chapter 7 bankruptcy to a Chapter 11 bankruptcy, which the district court affirmed. *Id.* Pursuant to the sale to a third-party entity, neither party to this appeal has any ownership rights or interests in the LaGrange property.

¶ 12 While the trial court had the authority to enjoin Braunstein's actions on the property, the intervening event of the sale of the LaGrange property has rendered this appeal moot. Any judgment on the injunction would have had no practical legal effect on any existing controversy because Braunstein has no legal interest to the LaGrange property and cannot affect or impair the title to the property. Since we are unable to provide any effectual relief, we must dismiss this appeal as moot.

¶ 13 Appeal dismissed.