2016 IL App (5th) 150490-U

NO. 5-15-0490

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

GREGORY SNIDER, Individually and Derivatively on Behalf of CARBON RECOVERY, LLC, Plaintiff-Appellee, v. ROBERT ROOKSBY, Defendant-Appellant.	)	Appeal from the Circuit Court of Madison County. No. 15-CH-558
ROBERT ROOKSBY, Individually and Derivatively on Behalf of CARBON RECOVERY, LLC, Counterclaim-Plaintiff/Appellant, v. GREGORY SNIDER, Counterclaim-Defendant/Appellee.	)	Honorable Clarence W. Harrison II, Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Goldenhersh and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order granting a preliminary injunction is vacated in part where the injunction acts as an equitable attachment and the plaintiff has a remedy at law.

¶ 2 Robert Rooksby appeals from the circuit court's order granting a preliminary injunction against him. The appellant is challenging paragraphs B and C of the preliminary injunction, which enjoined him from using 50% of the net proceeds from disputed coal transactions and required him to deposit 50% of said proceeds into his attorney's trust account. Because we find that paragraphs B and C of the preliminary injunction act as an equitable attachment and because the appellee, Gregory Snider, has a remedy at law, we vacate these paragraphs.

¶ 3 BACKGROUND

¶ 4 The appellant and appellee formed a limited liability company, Carbon Recovery, LLC. Carbon Recovery was organized by Engineered Fuels, LLC (a company wholly owned by the appellant), and Quality Disposables, LLC (a company wholly owned by the appellee). Carbon Recovery was formed to commercialize a drying system for coal fines, or the small particles of coal removed from coal as it is cleaned and sized after mining. To fund its operations, Carbon Recovery secured rights to the abandoned and scrap coal at Kinder Morgan's coal storage facilities in Grand Rivers, Kentucky, and Rockwood, Illinois. Under this agreement, General Waste Service ("GWS"), an agent of Carbon Recovery, acquired the coal from Kinder Morgan. It then used Greg's Truck Service, Inc., to deliver the coal to Southern Illinois Power Cooperative ("SIPC"), who paid GWS for the coal. GWS then endorsed these checks over to, and deposited them into, Carbon Recovery's account.

¶ 5 On May 21, 2015, the appellee sent an email to the appellant, stating that going forward, Carbon Recovery would only be making payments to Quality Disposables and not to Engineered Fuels or any other company named above. Further, the email stated that the appellant would no longer be authorized to use GWS's credit card.

¶ 6 On July 9, 2015, the appellant contracted to purchase a stockpile of coal from Peabody COAL TRADE, LLC ("Peabody"). The Peabody coal stockpile was located at Kinder Morgan's facility in Rockwood, Illinois. The appellant sold this coal to SIPC and used Greg's Truck Service to transport it.

¶ 7 In September 2015, the appellee received Greg's Truck Service invoices with GWS's name on them identifying deliveries of coal to SIPC between August 21, 2015, and August 31, 2015. The appellee further learned from SIPC that the appellant instructed SIPC to direct payments to his home in Indiana rather than to GWS. The appellant alleges these deliveries were of the Peabody coal and that GWS's name was inadvertently placed on the invoices. On September 23, 2015, the appellee filed his verified complaint, along with a motion for temporary restraining order and preliminary injunction. In the complaint, the appellee sought compensatory money damages and punitive damages, amongst other relief. In the motion, the appellee argued that "the remedy of a judgment at law for money damages is clearly inadequate" because the appellant's actions could "reduce the value of [the appellee's] Carbon Recovery protectable membership interest to zero."

¶ 8 On October 22, 2015, the circuit court held a hearing on the motion for preliminary injunction and granted the appellee's motion in part, enjoining both parties

from engaging in any business in the coal industry and prohibiting the appellant "from further using, spending, or otherwise dissipating" any money remaining from the coal deliveries in August 2015. On October 26, 2015, the court filed an order for preliminary injunction. In it, the court found that the appellee showed "his membership interest in Carbon Recovery is a clearly ascertainable right in need of protection," that Carbon Recovery needed "protection of its business relationship with its customer *** as a result of [the appellant's] actions," and that the appellee and Carbon Recovery would suffer irreparable harm with no adequate remedy at law or in equity if the injunction was not granted. In paragraph A of the order, the court prohibited either party from misappropriating the assets of Carbon Recovery, selling abandoned or scrap coal other than through Carbon Recovery, competing with the business of Carbon Recovery regarding abandoned or scrap coal, or taking any action on behalf of Carbon Recovery without the consent of the other party or the court. In paragraph B of the order, the court stated that the appellant "is enjoined from diverting, redirecting, converting, using, spending or otherwise misappropriating 50% of the net sales proceeds paid to [the appellant] or any entity owned or controlled in whole or in part by [the appellant], from the sale of coal since May 21, 2015." In paragraph C of the order, the court stated that "[the appellant] shall deposit into [his attorney's] Trust Account *** one half (1/2) of the 'Net Proceeds', received by [the appellant] or any entity owned or controlled in whole or in part by [the appellant] to the exclusion of Carbon Recovery, from the sale of coal in 2015."

¶ 9 On October 29, 2015, the appellant filed a motion for rehearing, clarification, and to dissolve paragraphs B and C of the order for preliminary injunction. On November 16, 2015, the circuit court held a hearing on the appellant's motion. The circuit court reviewed statements regarding Greg's Truck Service's billing and loading slips for the work performed by Greg's Truck Service. While the circuit court noted the documents were "less than clear," it did find that they facially indicated that the disputed transactions were on behalf of GWS. Therefore, the circuit court denied the motion the same day. Also at the hearing, the appellant stated that only $19,911 in net proceeds remained from the Peabody coal transactions. The circuit court therefore ordered that the appellant deposit $10,000 into his attorney's trust account. On November 18, 2015, the appellant filed his notice of appeal. On November 30, 2015, the appellant filed a notice of compliance stating he had deposited the $10,000 net proceeds into his attorney's trust account.

¶ 10 ANALYSIS

¶ 11 When seeking a preliminary injunction, "[t]he party seeking relief is not required to make out a case which would entitle him to relief on the merits; rather, he need only show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the case can be decided on the merits." *In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1076 (2007). In order to obtain a preliminary injunction, the appellee must demonstrate 1) a clearly ascertained right in need of protection, 2) irreparable injury in the absence of an injunction, 3) no adequate remedy at

law, and 4) a likelihood of success on the merits. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006).

¶ 12 The appellants argue that the circuit court erred in issuing paragraphs B and C of the preliminary injunction because the appellee has an adequate remedy at law and because the appellee will not experience irreparable harm without the protection of an injunction. "Irreparable harm occurs only where the remedy at law is inadequate, meaning that monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards." *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 947 (2001). Therefore, "[a] preliminary injunction should not be granted where damages caused by the alteration of the status quo pending a final decision on the merits can be compensated adequately by monetary damages calculable with a reasonable degree of certainty." *Id.* This court generally reviews a circuit court's grant or denial of a preliminary injunction for an abuse of discretion. *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 268 (2007).

¶ 13 Based on the verified complaint, the appellee seeks compensatory money damages and punitive damages which, if awarded, would be calculated based in part upon the money referenced in paragraphs B and C of the preliminary injunction. The appellee argues that the preliminary injunction is necessary because the circuit court found "great difficulty" in calculating the amount of harm. However, the circuit court's difficulty was not because damages could not be calculated with certainty but because the circuit court lacked sufficient evidence to interpret the documents before it at the hearing. The circuit court gave no indication that it believed damages would be uncertain to calculate. Thus,

the appellee has failed to allege a reason why it cannot be compensated adequately by monetary damages calculable with a reasonable degree of certainty at trial. The appellee has an adequate remedy at law, and he has not suffered irreparable harm. "Therefore, the trial court's order amounted to an equitable attachment of its property, *i.e.*, the restraining of defendant's control over property in its possession for the satisfaction of an equitable claim not reduced to judgment [citation), in violation of the longstanding rejection of that remedy in Illinois." *Kurti v. Silk Plants Etc. Franchise Systems, Inc.*, 200 Ill. App. 3d 605, 607 (1990). " '[T]he theory of taking away the control of a person's property by means of an injunction for the purpose of anticipating a judgment which may or may not thereafter be obtained by a litigant is abhorrent to the principles of equitable jurisdiction.' " *Hensley Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 190-91 (2010) (quoting *Carriage Way Apartments v. Pojman*, 172 Ill. App. 3d 827, 838 (1988)).

¶ 14 *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941 (2001), is instructive. In *Franz*, the plaintiff had sued the defendants for selling real estate lots at a reduced price in violation of their partnership agreement. *Id*. at 942. The circuit court granted an injunction preventing the defendants from selling any more lots because "the only remaining assets of the partnership were the remaining unsold lots and ***, without an injunction, plaintiff faced the possibility of an uncollectible judgment." *Id*. at 945. However, "the only evidence of harm to plaintiff resulting from defendants' transfer of lots was lost profit and the monetary loss resulting from the diversion of assets from the partnership." *Id.* at 947. The court thus reversed the circuit court, finding "[b]ecause the only relief requested *** is monetary, injunctive relief is inappropriate and resembles a

prejudgment attachment." *Id.* at 948. Similarly, because the appellee is seeking compensatory monetary damages and punitive damages for the appellant's transactions with Peabody, the appellee only seeks monetary relief, and injunctive relief is inappropriate.

¶ 15 The appellee argues, however, that the circumstances of this case allow for prejudgment attachment. The appellee notes that "a creditor having a money claim *** may have an attachment against the property of his or her debtor *** at the time of the commencement of the action or thereafter *** [w]here the debtor is not a resident of this State" or "[w]here the debtor is about fraudulently to conceal, assign, or otherwise dispose of his or her property or effects, so as to hinder or delay his or her creditors." 735 ILCS 5/4-101 (West 2014). The appellant maintains a residence in Indiana, and the appellee has raised concerns regarding whether the appellant is fraudulently concealing or disposing of funds. Thus, a creditor like the appellee can seek prejudgment attachment in similar circumstances. However, "[b]efore the entry of an order for attachment, *** the court shall take bond and sufficient security *** for the use of the person or persons interested in the property attached, in double the sum sworn to be due, conditioned for satisfying all costs which may be awarded to such defendant *** and all damages and costs which shall be recovered against the plaintiff, for wrongfully obtaining the attachment order." 735 ILCS 5/4-107 (West 2014). Thus, if the appellee sought prejudgment attachment, he must put forth a bond in double the amount of the appellant's money to be attached. Because the appellee did not pay such a bond, any prejudgment

attachment of the appellant's funds is invalid. See *ABN AMRO Services Co. v. Navarrete Industries, Inc.*, 383 Ill. App. 3d 138 (2008).

¶ 16 The appellee further argues that the money referenced in paragraphs B and C of the preliminary injunction is not the appellant's funds. He argues that this money is the property of Carbon Recovery and GWS and, therefore, not subject to the prejudgment attachment restrictions. However, whether the money referenced in paragraphs B and C is the property of the appellant or of Carbon Recovery and GWS is one of the issues the parties seek to resolve at trial. Taking the position that this money is Carbon Recovery and GWS's property would, in effect, be resolving the issue prior to a trial on the merits, and we decline to make such a determination.

¶ 17 The appellee has cited one case in which the appellate court upheld a preliminary injunction that preserved monetary funds in order to preserve the status quo. See *All Seasons Excavating Co. v. Bluthardt*, 229 Ill. App. 3d 22, 26 (1992). However, in that case, the plaintiffs had shown that the defendants were insolvent and that, therefore, if the injunction were denied, any judgment against the defendants would be meaningless. *Id.* at 28. Here, the appellee has made no such argument. The appellee alleges that the appellant received $312,199 from the Peabody coal transactions. The appellant has stated only $19,911 in net proceeds from the Peabody coal transactions remain. However, the appellee has not shown that the appellant has overspent due to insolvency, that the appellant lacks other available funding to account for any missing portion of the money, or that the appellant otherwise will be unable to pay without the injunction in place.

Without such a showing, we cannot uphold paragraphs B and C of the preliminary injunction.

¶ 18 The appellee lastly argues that the funds should be deposited under the specific funds exception, which allows Illinois courts to grant injunctive relief with regards to money when a claimant has an interest in specific funds held by the debtor. *Hensley Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 191 (2010). Generally, the specific funds exception applies when the funds at issue have a specific connection to the underlying dispute, such as being held in a segregated account. *Id.* at 192. Courts have held that loan proceeds that had been specifically earmarked to repay a mortgage debt (*All Seasons Excavating Co. v. Bluthardt*, 216 Ill. App. 3d 504 (1991)), payments due from the parties to each other under a re-insurance treaty that was the subject of the litigation (*American Re-Insurance Co. v. MGIC Investment Corp.*, 73 Ill. App. 3d 316 (1979)), and money held in a disputed trust account (*Keeshin v. Schultz*, 128 Ill. App. 2d 460 (1970)) can be considered specific funds.

¶ 19 The circuit court held that this case is not a specific funds case because these funds were not held in a Carbon Recovery or GWS account. We agree. The appellee argues that the money discussed in paragraphs B and C of the preliminary injunction should have been paid to Carbon Recovery and GWS, while the appellant argues that the money was his from an independent business venture. The appellee seeks "to enjoin [the appellant] from *** disbursing money allegedly belonging to [the appellee]," yet the appellee "does not have the same proprietary right to the funds" as someone disputing money earmarked for a specific debt, held in a trust account, or due under a contract.

Maas v. Cohen Associates, Inc., 112 Ill. App. 3d 191, 197 (1983). Thus, the appellee has "an arguable right to compensation ***, a right he can pursue adequately in a court of law." *Id.*

¶ 20 CONCLUSION

¶ 21 For the reasons stated, we vacate in part the judgment of the circuit court of Madison County.

¶ 22 Vacated in part.